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

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–74244; File No. S7–34–10]

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

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: In accordance with Section 763 and Section 766 of Title VII (''Title VII'') of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''), the Securities and Exchange Commission (''SEC'' or ''Commission'') is adopting Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information (''Regulation SBSR'') under the Securities Exchange Act of 1934 (''Exchange Act''). Regulation SBSR provides for the reporting of security-based swap information to registered security-based swap data repositories (''registered SDRs'') or the Commission, and the public dissemination of security-based swap transaction, volume, and pricing information by registered SDRs. Registered SDRs are required to establish and maintain certain policies and procedures regarding how transaction data are reported and disseminated, and participants of registered SDRs that are registered security-based swap dealers or registered major security-based swap participants are required to establish and maintain policies and procedures that are reasonably designed to ensure that they comply with applicable reporting obligations. Regulation SBSR contains provisions that address the application of the regulatory reporting and public dissemination requirements to cross-border security-based swap activity as well as provisions for permitting market participants to satisfy these requirements through substituted compliance. Finally, Regulation SBSR will require a registered SDR to register with the Commission as a securities information processor.

DATES: *Effective Date:* May 18, 2015.

Compliance Date: For Rules 900, 907, and 909 of Regulation SBSR, the compliance date is the effective date. For Rules 901, 902, 903, 904, 905, 906, and 908 of Regulation SBSR, compliance dates are being proposed in a separate release, 34–74245 (February 11, 2015).

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I. Introduction

The Commission is adopting Regulation SBSR, which implements the requirements for regulatory reporting and public dissemination of security-based swap transactions set forth in Title VII of the Dodd-Frank Act.[1] The Dodd-Frank Act was enacted, among other reasons, to promote the financial stability of the United States by improving accountability and transparency in the financial system.[2] The 2008 financial crisis highlighted significant issues in the over-the-counter (''OTC'') derivatives markets, which experienced dramatic growth in the years leading up to the financial crisis and are capable of affecting significant sectors of the U.S. economy. Title VII of the Dodd-Frank Act provides for a comprehensive new regulatory framework for swaps and security-based swaps, by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants; (2) imposing clearing and trade execution requirements on swaps and security-based swaps, subject to certain exceptions; (3) creating recordkeeping, regulatory reporting, and public dissemination requirements for swaps and security-based swaps; and (4) enhancing the rulemaking and enforcement authorities of the Commission and the Commodity Futures Trading Commission (''CFTC'').

The Commission initially proposed Regulation SBSR in November 2010.[3] In May 2013, the Commission re-proposed the entirety of Regulation SBSR as part of the Cross-Border Proposing Release[4] and re-opened the comment period for all of its other outstanding Title VII rulemakings.[5]

The Commission received 86 comments that were specifically directed to the comment file (File No. S7–34–10) for the Regulation SBSR Proposing Release, of which 38 were comments submitted in response to the re-opening of the comment period.[6] Of the comments directed to the comment file (File No. S7–02–13) for the Cross-Border Proposing Release, six referenced Regulation SBSR specifically, while many others addressed cross-border issues generally, without specifically referring to Regulation SBSR. The Commission also has considered other comments germane to regulatory reporting and/or public dissemination of security-based swaps that were submitted in other contexts. The comments discussed in this release are listed in the Appendix to the release.

The Commission is now adopting Regulation SBSR largely as re-proposed, with certain revisions suggested by commenters or designed to clarify the rules. In addition, in separate releases, as discussed below, the Commission also is adopting rules relating to SDR registration, duties, and core principles (the ''SDR Adopting Release'')[7] and is proposing certain rules, amendments, and guidance relating to Regulation SBSR (''Regulation SBSR Proposed Amendments Release'').[8] The principal aspects of Regulation SBSR—which, as adopted, consists of ten rules, Rules 900 to 909 under the Exchange Act[9]—are briefly described immediately below. A detailed discussion of each rule within Regulation SBSR, as well as how these rules interact with the rules in the SDR Adopting Release, follows in the body of this release.[10]

A. Summary of Final Regulation SBSR

Rule 900, as adopted, sets forth the definitions used throughout Regulation SBSR. The defined terms are discussed in connection with the rules in which they appear.

Rule 901(a), as adopted, assigns the reporting obligation for all security-based swaps except for the following: (1) Clearing transactions;[11] (2) security-based swap transactions executed on a platform[12] that will be submitted to clearing; (3) transactions where there is no U.S. person, registered security-

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See* Public Law 111–203, Preamble.

[3] *See* Securities Exchange Act Release No. 63346 (November 19, 2010), 75 FR 75207 (December 2, 2010) (''Regulation SBSR Proposing Release'').

[4] *See* Securities Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30967 (May 23, 2013) (''Cross-Border Proposing Release'').

[5] *See* Securities Exchange Act Release No. 69491 (May 1, 2013), 78 FR 30799 (May 23, 2013).

[6] However, one comment that was specifically directed to the comment file for the Regulation SBSR Proposing Release exclusively addressed issues related to clearing ''debt swaps.'' *See* Hamlet Letter. Because the subject matter of this comment letter is beyond the scope of Regulation SBSR, the Commission is not addressing this comment.

[7] *See* Securities Exchange Act Release No. 74246 (February 11, 2015).

[8] *See* Securities Exchange Act Release No. 74245 (February 11, 2015).

[9] 15 U.S.C. 78a *et seq.* All references in this release to the Exchange Act refer to the Securities Exchange Act of 1934.

[10] If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

[11] A ''clearing transaction'' is defined as ''a security-based swap that has a registered clearing agency as a direct counterparty.'' *See* Rule 900(g).

[12] A ''platform'' is defined as a ''national securities exchange or security-based swap execution facility that is registered or exempt from registration.'' *See* Rule 900(v); *infra* note 199 and accompanying text (discussing the definition of ''platform'').

based swap dealer, or registered major security-based swap participant on either side; and (4) transactions where there is no registered security-based swap dealer or registered major security-based swap participant on either side and there is a U.S. person on only one side. For purposes of this release, the Commission uses the term ''covered transactions'' to refer to all security-based swaps other than those listed in the four categories above; all covered transactions shall be reported in the manner set forth in Regulation SBSR, as adopted. For covered transactions, Rule 901(a) assigns the duty to report to one side of the transaction (the ''reporting side''). The ''reporting hierarchy'' established in Rule 901(a) is based, where possible, on the registration status (*e.g.,* registration as a security-based swap dealer or major security-based swap participant) of the direct and indirect counterparties to the transaction. In the Regulation SBSR Proposed Amendments Release, the Commission is proposing amendments to Rule 901(a) that would impose reporting obligations for security-based swaps in categories one and two above (*i.e.,* clearing transactions and security-based swap transactions executed on a platform and that will be submitted to clearing).

Rule 901(b), as adopted, provides that if there is no registered security-based swap data repository (''SDR'') that will accept the report, the reporting side must report the transaction to the Commission.[13]

Rule 901(c) sets forth the primary trade information and Rule 901(d) sets forth the secondary trade information that must be reported. For most transactions, the Rule 901(c) information will be publicly disseminated. Information reported pursuant to Rule 901(d) is for regulatory purposes only and will not be publicly disseminated.

Rule 901(e) requires the reporting of life cycle events to the entity to which the original transaction was reported.

Rule 901(i) requires reporting, to the extent the information is available, of security-based swaps entered into before the date of enactment of the Dodd-Frank Act (''pre-enactment security-based swaps'') and security-based swaps entered into after the date of enactment but before Rule 901 becomes fully operative (''transitional security-based swaps'').

[13] A ''registered security-based swap data repository'' is defined as ''a person that is registered with the Commission as a security-based swap data repository pursuant to Section 13(n) of the Exchange Act (15 U.S.C. 78m(n)) and any rules or regulations thereunder.'' *See* Rule 900(ff).

B. Role of Registered SDRs

Rule 902(a) requires a registered SDR to publicly disseminate a transaction report immediately upon receipt of information about a security-based swap, except in certain limited circumstances. Pursuant to Rule 902(a), the published transaction report must consist of all the information reported pursuant to Rule 901(c), plus any condition flag contemplated by the registered SDR's policies and procedures that are required by Rule 907. Rule 901(f) requires a registered SDR to timestamp any information submitted to it pursuant to Rule 901(c), (d), (e), or (i), and Rule 901(g) requires a registered SDR to assign a transaction ID to each security-based swap.

Rule 907(a) requires a registered SDR to establish and maintain written policies and procedures that detail how it will receive and publicly disseminate security-based swap transaction information. For example, Rule 907(a)(1) requires policies and procedures that enumerate the specific data elements of a security-based swap that must be reported to the registered SDR, including the data elements specified in Rules 901(c) and 901(d). Rule 907(a)(2) requires policies and procedures that specify one or more acceptable data formats, connectivity requirements, and other protocols for submitting information. Rules 907(a)(3) and 907(a)(4) require policies and procedures for assigning condition flags to the appropriate transaction reports. In addition, Rule 907(c) requires a registered SDR to make its policies and procedures available on its Web site.

Rule 907(e) requires a registered SDR to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to Regulation SBSR and the registered SDR's policies and procedures established thereunder.

Finally, Rule 909 requires a registered SDR also to register with the Commission as a securities information processor (''SIP'').

C. Unique Identification Codes

Rule 903 requires a registered SDR to use ''unique identification codes'' (''UICs'') to specifically identify a variety of persons and things. The following UICs are specifically required by Regulation SBSR: Counterparty ID, product ID, transaction ID, broker ID, branch ID, trading desk ID, trader ID, platform ID, and ultimate parent ID.

Rule 906(b) requires each participant of a registered SDR to provide the registered SDR with information sufficient to identify the participant's ultimate parent(s) and any affiliate(s) of the participant that are also participants of the registered SDR.

Rule 903(a) provides that, if an internationally recognized standards-setting system (''IRSS'') meeting certain criteria is recognized by the Commission and has assigned a UIC to a person, unit of a person, or product (or has endorsed a methodology for assigning transaction IDs), that UIC must be used by all registered SDRs and their participants in carrying out duties under Regulation SBSR. If the Commission has not recognized an IRSS—or if the Commission-recognized IRSS has not assigned a UIC to a particular person or thing—the registered SDR is required to assign a UIC using its own methodology. Additionally, Rule 903(a) provides that, if the Commission has recognized such a system that assigns UICs to persons, each participant of a registered SDR shall obtain a UIC from or through that system for identifying itself, and each participant that acts as a guarantor of a direct counterparty's performance of any obligation under a security-based swap that is subject to Rule 908(a) shall, if the direct counterparty has not already done so, obtain a UIC for identifying the direct counterparty from or through that system, if that system permits third-party registration without a requirement to obtain prior permission of the direct counterparty. As discussed further in Section X(B)(2), *infra,* the Commission recognizes the Global LEI System (''GLEIS''), administered by the Regulatory Oversight Committee (''ROC''), as meeting the criteria specified in Rule 903. The Commission may, on its own initiative or upon request, evaluate other IRSSs and decide whether to recognize such other systems.

D. Public Dissemination and Block Trades

Section 13(m)(1)(B) of the Exchange Act[14] authorizes the Commission ''to make security-based swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.'' Section 13(m)(1)(C) of the Exchange Act[15] identifies four categories of security-based swaps and authorizes the Commission ''to provide by rule for the public availability of security-based swap transaction, volume, and pricing data.'' Section 13(m)(1)(C) further provides that, with respect to each of

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

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

these four categories of security-based swaps, ''the Commission shall require real-time public reporting for such transactions.'' Section 13(m)(1)(D) of the Exchange Act [16] provides that the Commission may require registered entities (such as registered SDRs) to publicly disseminate the security-based swap transaction and pricing data required to be reported under Section 13(m) of the Exchange Act. Finally, Section 13(n)(5)(D)(ii) of the Exchange Act [17] requires SDRs to provide security-based swap information ''in such form and at such frequency as the Commission may require to comply with public reporting requirements.''

Under Rule 902, as adopted, a registered SDR must, immediately upon receiving a transaction report of a security-based swap, publicly disseminate the primary trade information of that transaction, along with any condition flags.

In addition, Section 13(m)(1)(E) of the Exchange Act [18] requires the Commission rule for real-time public dissemination of cleared security-based swaps to: (1) ''specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts''; and (2) ''specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public.'' Section 13m(1)(E)(iv) of the Exchange Act [19] requires the Commission rule for real-time public dissemination of security-based swaps that are not cleared at a registered clearing agency but reported to a registered SDR to contain provisions that ''take into account whether the public disclosure [of transaction and pricing data for security-based swaps] will materially reduce market liquidity.''

As discussed in detail below, in response to the comments received and in light of the fact that the Commission has not yet proposed block thresholds, the Commission is adopting final rules that require all security-based swaps—regardless of their notional amount—to be reported to a registered SDR at any point up to 24 hours after the time of execution.[20] The registered SDR will be required, as with all other dissemination-eligible transactions, to publicly disseminate a report of the transaction immediately and automatically upon receipt of the information from the reporting side.

Although the Commission is adopting final rules relating to regulatory reporting and public dissemination of security-based swaps, it intends for the rules relating to public dissemination to apply only on an interim basis. This interim approach is designed to address the concerns of commenters who believed that a public dissemination regime with inappropriately small block trade thresholds could harm market liquidity, and who argued that market participants would need an extended phase-in period to achieve real-time reporting. In connection with its future rulemaking about block thresholds, the Commission anticipates seeking public comment on issues related to block trades. Given the establishment of this interim phase, the Commission is not adopting any other proposed rules relating to block trades.

E. Cross-Border Issues

Regulation SBSR, as initially proposed, included Rule 908, which addressed when Regulation SBSR would apply to cross-border security-based swaps and counterparties of security-based swaps. The Commission re-proposed Rule 908 with substantial revisions as part of the Cross-Border Proposing Release. The Commission is now adopting Rule 908 substantially as re-proposed with some modifications, as discussed in Section XV, *infra.*[21]

Under Rule 908, as adopted, any security-based swap involving a U.S. person, whether as a direct counterparty or as a guarantor, must be reported to a registered SDR, regardless of where the transaction is executed.[22] Furthermore, any security-based swap involving a registered security-based swap dealer or registered major security-based swap participant, whether as a direct counterparty or as a guarantor, also must be reported to a registered SDR, regardless of where the transaction is executed. In addition, any security-based swap that is accepted for clearing by a registered clearing agency having its principal place of business in the United States must be reported to a registered SDR, regardless of the registration status or U.S. person status of the counterparties and regardless of where the transaction is executed.

In the Cross-Border Proposing Release, the Commission proposed a new paragraph (c) to Rule 908, which contemplated a regime for allowing ''substituted compliance'' for regulatory reporting and public dissemination with respect to individual foreign jurisdictions. Under this approach, compliance with the foreign jurisdiction's rules could be substituted for compliance with the Commission's Title VII rules, in this case Regulation SBSR. Final Rule 908(c) allows interested parties to request a substituted compliance determination with respect to a foreign jurisdiction's regulatory reporting and public dissemination requirements, and sets forth the standards that the Commission would use in determining whether the foreign requirements were comparable.

F. Compliance Dates

For Rules 900, 907, and 909 of Regulation SBSR, the compliance date is the effective date of this release. For Rules 901, 902, 903, 904, 905, 906, and 908 of Regulation SBSR, a new compliance schedule is being proposed in the Regulation SBSR Proposed Amendments Release. Accordingly, compliance with Rules 901, 902, 903, 904, 905, 906, and 908 is not required until the Commission establishes compliance dates for those rules.

Rules 910 and 911, as proposed and re-proposed, would have established compliance dates and imposed certain restrictions, respectively, during Regulation SBSR's phase-in period. For reasons discussed in the Regulation SBSR Proposed Amendments Release, the Commission has determined not to adopt Rule 910 or 911.[23]

II. Information Required To Be Reported

A. Primary Trade Information—Rule 901(c)

1. Description of Re-Proposed Rule

Rule 901(c), as re-proposed, would have required the reporting of the following primary trade information in real time, which information would

[16] 15 U.S.C. 78m(m)(1)(D).

[17] 15 U.S.C. 78m(n)(5)(D)(ii).

[18] 15 U.S.C. 13m(m)(1)(E).

[19] 15 U.S.C. 13m(m)(1)(E)(iv).

[20] As discussed in more detail in Section VII(B), *infra,* if reporting would take place on a non-business day (*i.e.,* a Saturday, Sunday or U.S. federal holiday), reporting would instead be required by the same time on the next business day.

[21] The Commission anticipates seeking further public comment on the application of Regulation SBSR to: (1) Security-based swaps where there is no U.S. person, registered security-based swap dealer, or registered major security-based swap participant on either side; and (2) transactions where there is no registered security-based swap dealer or registered major security-based swap participant on either side and there is a U.S. person on only one side.

[22] *See also* Section II(B)(3) and note 139, *infra* (describing the type of guarantees that could cause a transaction to be subject to Regulation SBSR).

[23] Thus, Regulation SBSR, as adopted, consists of Rules 900 through 909 under the Exchange Act. Conforming changes have been made throughout Regulation SBSR to replace references to ''§§ 242.900 through 242.911'' to ''§§ 242.900 through 242.909.'' In addition, the defined terms ''registration date'' and ''phase-in period'' which appeared in re-proposed Rules 910 and 911, respectively, are not being defined in final Rule 900.

then be publicly disseminated: (1) The asset class of the security-based swap and, if the security-based swap is an equity derivative, whether it is a total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the security-based swap is based; (2) information that identifies the security-based swap instrument and the specific asset(s) or issuer(s) of any security on which the security-based swap is based; (3) the notional amount(s), and the currenc(ies) in which the notional amount(s) is (are) expressed; (4) the date and time, to the second, of execution, expressed using Coordinated Universal Time (UTC); (5) the effective date; (6) the scheduled termination date; (7) the price; (8) the terms of any fixed or floating rate payments, and the frequency of any payments; (9) whether or not the security-based swap will be cleared by a clearing agency; (10) if both counterparties to a security-based swap are registered security-based swap dealers, an indication to that effect; (11) if applicable, an indication that the transaction does not accurately reflect the market; and (12) if the security-based swap is customized to the extent that the information in items (1) through (11) above does not provide all of the material information necessary to identify such customized security-based swap or does not contain the data elements necessary to calculate the price, an indication to that effect.

2. Discussion of Final Rule 901(c) and Response to Comments

a. General Approach to Required Information

Rules 901(c) and 901(d), as adopted, require the reporting of general categories of information, without enumerating specific data elements that must be reported, except in limited cases. The Commission has made minor revisions to the introductory language of Rule 901(c).[24]

In addition, Rule 907(a)(1), as adopted, requires each registered SDR to establish, maintain, and make publicly available policies and procedures that, among other things, specify the data elements that must be reported.[25] Commenters expressed mixed views regarding this approach. One commenter expressed the view that ''any required data should be clearly established by the Commission in its rules and not decided in part by [SDRs].'' [26] This commenter further asked the Commission to clarify that any additional fields provided by registered SDRs for reporting would be optional.[27] Two commenters, however, supported the Commission's approach of providing registered SDRs with the authority to define relevant fields on the basis of general guidelines as set by the SEC.[28] One of these commenters noted that it would be difficult for the Commission to specify the security-based swap data fields because security-based swaps are complex products that may require a large number of data fields to be electronically confirmed.[29] In addition, the commenter stated that electronic methods for processing existing and new security-based swaps continue to be developed; accordingly, the commenter stated that establishing a detailed list of reportable fields for each category of security-based swap would be impracticable because such a system ''will be outdated with every new product launch or change in market practice,'' and would result in a ''regulatory scheme that is continuously lagging behind the market.'' [30] The commenter cautioned, however, that the Commission must assure that there is consistency among the data fields collected and reported by registered SDRs in the same asset class so that it would be possible to consolidate the data.[31]

The Commission shares the commenter's concerns about the potential difficulties of consolidating data if there are multiple registered SDRs in the same asset class and each establishes different data elements for information that must be reported. Enumerating specific data elements required to be reported could help to promote consistency among the data fields if there are multiple registered SDRs in the same asset class. In addition, as discussed more fully below, such an approach would be more consistent with the approach taken by the CFTC's swap reporting rules. The Commission also acknowledges the comment that the Commission's rules, rather than the policies and procedures of a registered SDR, should specify the information required to be reported. However, the Commission believes on balance that establishing broad categories of required information will more easily accommodate new types of security-based swaps and new conventions for capturing and reporting transaction data. The Commission agrees with the commenter who expressed the view that a rule that attempted to enumerate the required data elements for each category of security-based swap could become outdated with each new product, resulting in a regulatory framework that constantly lagged the market and would need to be updated.[32] The Commission believes that a standards-based approach will more easily accommodate new security-based swap reporting protocols or languages, as well as new market conventions, including new conventions for describing the data elements that must be reported.

One group of commenters noted that the CFTC provided greater specificity regarding the information to be reported.[33] Several commenters generally urged the Commission and the CFTC to establish consistent reporting obligations to reduce the cost of implementing both agencies' reporting rules.[34]

[24] The first sentence of re-proposed Rule 901(c), which would have required real-time public dissemination of certain data elements, would have stated, in relevant part, ''For any security-based swap that must be publicly disseminated pursuant to §§ 242.902 and 242.908 and for which it is the reporting side, the reporting side shall report the following information . . .'' The information required to be reported pursuant to Rule 901(c) must be reported for all covered transactions, even though Rule 902(c) provides that certain security-based swap transactions are not subject to public dissemination. Accordingly, the Commission is not including in final Rule 901(c) the phrase ''For any security-based swap that must be publicly disseminated pursuant to §§ 242.902 and 242.908 and for which it is the reporting side . . .'' In addition, as discussed in Section VII(B)(1), *infra*, Rule 901(c), as adopted, provides that the reporting side shall report the information specified in Rule 901(c) within the timeframe specified by Rule 901(j).

[25] *See infra* Section V.

[26] ISDA IV at 8.

[27] *See id.* at 9.

[28] *See* MarkitSERV I at 10; Barnard I at 2 (also supporting the proposed categories of information that would be required to be reported for public dissemination).

[29] *See* MarkitSERV I at 9–10. The commenter stated, for example, that the confirmation for a new ''standard'' credit default swap (''CDS'') would contain 35 to 50 data fields, depending on the structure of the CDS, and the confirmation for other CDS products and life cycle events combined would require a total of 160 data fields. *See id.* at note 37.

[30] MarkitSERV I at 10.

[31] *See* MarkitSERV I at 10.

[32] *See id.*

[33] *See* ISDA/SIFMA I at 6.

[34] *See* Better Markets I at 2; Cleary II at 3, 21 note 61 (noting that a consistent approach between the two agencies would address the reporting of mixed swaps); ISDA/SIFMA I at 6; J.P. Morgan Letter at 14; ISDA IV at 1–2 (generally urging that the Commission align, wherever possible and practical, with the CFTC reporting rules). The last commenter also noted that reporting of mixed swaps will be difficult if Regulation SBSR requires a different reporting counterparty from the CFTC's swap data reporting rules or if transaction identifiers are not conformed to the CFTC approach, *see* ISDA IV at 4, 11, and urged the Commission to coordinate with the CFTC on a uniform approach to the time of execution for mixed swaps, *see id.* at 14. A mixed swap is a swap that is subject to both the jurisdiction of the CFTC and SEC, and, absent a joint order of the CFTC and SEC with respect to the mixed swap, as described in Rule 3a67–4(c) under

Continued

The Commission agrees that it would be beneficial to harmonize, to the extent practicable, the information required to be reported under Regulation SBSR and under the CFTC's swap reporting rules. However, the Commission believes that it is possible to achieve a significant degree of consistency without including in final Rule 901 a detailed list of required data elements for each security-based swap. Rather than enumerating a comprehensive list of required data elements in the rule itself, Rule 901 identifies broad categories of information in the rule, and a registered SDR's policies and procedures are required to identify specific data elements that must be reported. The Commission believes that the flexibility afforded by Rule 901 will facilitate harmonization of reporting protocols and elements between the CFTC and SEC reporting regimes. In identifying the specific data elements that must be reported, a registered SDR could, in some instances, require reporting of the same data elements that are required to be reported pursuant to the CFTC's swap reporting rules, provided that those data elements include the information required under Rules 901(c) and 901(d). In some cases, however, the differences between the asset classes under the Commission's jurisdiction and those under the CFTC's jurisdiction will require a registered SDR's policies and procedures to specify the reporting of data elements different from those required under the CFTC's rules.

The Commission recognizes that enumerating the specific data elements required to be reported would be more consistent with the approach taken by the CFTC's swap reporting rules. Nevertheless, the Commission believes that the flexibility afforded by the category-based approach in adopted Rule 901(c) could facilitate harmonization. Accordingly, Rule 901(c), as adopted, continues to require the reporting of broad categories of security-based swap information to registered SDRs, without enumerating each data element required to be reported (with a few exceptions, described below).

b. Rule 901(c)(1)

Rule 901(c)(1), as re-proposed, would have required reporting of the asset class of a security-based swap and, if the security-based swap is an equity derivative, whether it is a total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the security-based swap is based. As described in detail below, the Commission is making several revisions to Rule 901(c)(1) in response to comments. Among other things, these revisions clarify the final rules and eliminate certain unnecessary elements and redundancies. Final Rule 901(c)(1), however, does not expand on the types of data elements that must be reported.

i. Elimination of the Reference to Equity Derivatives

The Commission is eliminating the reference to equity derivatives in final Rule 901(c)(1). Under Regulation SBSR, as proposed and re-proposed, it would have been necessary to identify total return swaps and other security-based swaps designed to offer risks and returns proportional to a position in an equity security or securities, because those security-based swaps would not have been eligible for a block trade exception.[35] However, because the Commission is not adopting block thresholds or other rules relating to the block trade exception at this time, it is not necessary to identify security-based swaps that are not eligible for a block trade exception during the first, interim phase of Regulation SBSR.[36] Accordingly, the Commission is not including in final Rule 901(c)(1) any requirement to identify a security-based swap as a total return swap or a security-based swap otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the security-based swap is based.

ii. Product ID

Final Rule 901(c)(1) requires the reporting of the product ID[37] of a security-based swap, if one is available. If the security-based swap has no product ID, or if the product ID does not include the information enumerated in Rule 901(c)(1)(i)–(v), then the information specified in subparagraphs (i)–(v) of Rule 901(c)(1) (discussed below) must be reported. Rule 901(c)(1) is designed to simplify the reporting process for security-based swaps that have a product ID by utilizing the product ID in lieu of each of the categories of data enumerated in Rule 901(c)(1)(i)–(v).

The Commission believes that the product ID will provide a standardized, abbreviated, and accurate means for identifying security-based swaps that share certain material economic terms. In addition, the reporting and public dissemination of the product ID could enhance transparency because a transaction report that used a single identifier for the product traded could be easier to read than a transaction report that identified the product traded through information provided in numerous individual data fields. For example, market observers would be able to discern quickly that transaction reports including the same product ID related to trades of the same product. Product IDs also could facilitate risk management and assist relevant authorities in analyzing systemic risk and conducting market surveillance. Furthermore, the Commission believes that the development of security-based swaps with standardized terms could facilitate the development of product IDs that would readily identify the terms of these transactions.

Re-proposed Rule 901(c)(2) would have required reporting of information that identifies the security-based swap instrument and the specific asset(s) or issuer(s) of any security on which the security-based swap is based. Proposed Rule 900 defined ''security-based swap instrument'' to mean ''each security-based swap in the same asset class, with the same underlying reference asset, reference issuer, or reference index.''[38] In the context of final Rule 901(c), the requirement to report the product ID, if one is available, replaces, among other things, the requirement in re-proposed Rule 901(c)(2) to report information that identifies the security-based swap instrument and the specific asset(s) or issuer(s) of any security on which the security-based swap is based. For a security-based swap that has no product ID, Rule 901(c)(1)(i), as adopted, requires reporting of information that identifies the security-based swap, including the asset class of the security-based swap and the specific underlying reference asset(s), reference issuer(s), or reference index. Because the

the Exchange Act, is subject to the applicable reporting and dissemination rules adopted by the CFTC and SEC.

[35] Rule 907(b)(2)(i), as proposed and re-proposed, would have prohibited a registered SDR from designating as a block trade any security-based swap that is an equity total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the security-based swap is based. As noted in the Regulation SBSR Proposing Release, there is no delay in the reporting of block transactions for equity securities in the United States. Re-proposed Rule 907(b)(2)(i) was designed to discourage market participants from evading post-trade transparency in the equity securities markets by using synthetic substitutes in the security-based swap market. *See* Regulation SBSR Proposing Release, 75 FR 75232.

[36] *See infra* Section VII.

[37] *See* Rule 900(bb) (defining ''product ID'' as ''the UIC assigned to a product'').

[38] This definition was re-proposed in the Cross-Border Proposing Release without change as Rule 900(dd).

information that was included in the definition of security-based swap instrument—*i.e.*, the asset class and the underlying reference asset, issuer, or index—will be reported pursuant to adopted Rule 901(c)(1)(i) or included in the product ID, it is no longer necessary to separately define ''security-based swap instrument.'' Thus, final Rule 900 no longer contains a definition of security-based swap instrument.

Although Rule 900, as proposed, defined the term ''product ID,'' it did not separately propose to define the term ''product.'' [39] Moreover, the original definition of the term ''unique identification code'' included the term ''product,'' again without defining it.[40] The Commission is now adopting a specific definition of the term ''product.'' Final Rule 900(aa) defines ''product'' as ''a group of security-based swap contracts each having the same material economic terms except those relating to price and size.'' Accordingly, the definition of ''product ID'' in adopted Rule 900(bb) is revised to mean ''the UIC assigned to a product.''

The key aspect of the term ''product'' is the classifying together of a group of security-based swap contracts that have the same material economic terms, other than those relating to price and size. The assignment of product IDs to groups of security-based swaps with the same material economic terms, other than those relating to price and size, is designed to facilitate more efficient and accurate transaction reporting by allowing reporting of a single product ID in place of the separate data categories contemplated by Rule 901(c)(1)(i)–(v). Product IDs also will make disseminated transaction reports easier to read, and will assist the Commission and other relevant authorities in monitoring for systemic risk and conducting market surveillance.

Although the price and size of a security-based swap are material terms of the transaction—and thus must be reported, along with many other material terms, to a registered SDR pursuant to Rules 901(c) and 901(d)—they do not help distinguish one product from another. The same product can be traded with different prices and with different notional amounts. Thus, by way of example and not of limitation, if otherwise materially similar security-based swaps have different currencies of denomination, underlying assets, or settlement terms, they are different products for purposes of Regulation SBSR and should have different product IDs. An indicium of whether two or more security-based swaps between the same direct counterparties are the same product is whether they could be compressed or netted together to establish a new position (*e.g.*, by a clearing agency or portfolio compression service).[41] If they cannot be compressed or netted, this suggests that there are material differences between the terms of the security-based swaps that do not permit the risks to be fully offset.

The fact that the Commission is requiring products to be distinguished for purposes of regulatory reporting and public dissemination even if a single material economic term differentiates one from another would not prevent the Commission and market participants from analyzing closely related products on a more aggregate basis. For example, products that were otherwise identical but for different currencies of denomination could still be grouped together to understand the gross amount of exposure created by these related products (factoring in exchange rates). However, a product ID system that was not granular enough to separate products based on individual material differences would make it difficult or impossible to analyze positions based solely on those individual differences. For example, if a product ID system permitted otherwise similar security-based swaps with different currencies of denomination to be considered as the same product, it would not be possible to observe risk aggregations according to their particular currencies.[42]

Similarly, the Commission believes that otherwise materially identical security-based swaps with different dates of expiration are different products and therefore must have different product IDs. Delineating products by, among other things, date of expiration will assist the Commission and other relevant authorities in developing a more precise analysis of risk exposure over time. This feature of the ''product'' definition is different from the approach taken in the originally proposed definition of ''security-based swap instrument,'' which specifically rejected distinctions based on tenor.[43]

In connection with these requirements, the Commission notes the part of the ''product'' definition referring to a product as ''a group of security-based swap *contracts*'' (plural). If a group of security-based swap contracts is sufficiently standardized such that they all share the same material economic terms (other than price and size), a registered SDR should treat them as the same product and assign them the same product ID. A product could be evidenced, for example, by the fact that a clearing agency makes the group of security-based swap contracts eligible for clearing and will net multiple transactions in that group of contracts into a single open position. In contrast, a security-based swap that has a combination of material economic terms unlike any other security-based swap would not be part of a product group, and the Commission believes that it would be impractical to require registered SDRs to assign a product ID to each of these unique security-based swaps. For such a security-based swap, the transaction ID would be sufficient to identify the security-based swap in the registered SDR's records and would serve the same purpose as a product ID.

The product ID is one type of UIC. As discussed more fully in Section X, *infra*, Rule 903(a), as adopted, requires a registered SDR to use a UIC, including a product ID, assigned by an IRSS, if an IRSS has been recognized by the Commission and issues that type of UIC. If an IRSS that can issue product IDs has not been recognized by the Commission, Rule 903(a) requires a registered SDR to assign a product ID to that product using its own methodology. Similarly, final Rule 907(a)(5) requires a registered SDR to establish and maintain written policies and procedures for assigning UICs in a manner consistent with Rule 903, which establishes standards for the use of UICs.[44]

One commenter noted that, although there likely will be global standards for identification codes for certain data

[39] Rule 900, as proposed, defined ''product ID'' to mean ''the UIC assigned to a security-based swap instrument.'' As discussed above, Rule 900, as proposed, defined ''security-based swap instrument'' to mean ''each security-based swap in the same asset class, with the same underlying reference asset, reference issuer, or reference index.'' Both of these definitions were re-proposed in the Cross-Border Proposing Release without change as Rules 900(x) and 900(dd), respectively.

[40] Rule 900, as proposed, defined UIC as ''the unique identification code assigned to a person, unit of a person, or *product* . . .'' (emphasis added). This definition was re-proposed in the Cross-Border Proposing Release without change as Rule 900(nn).

[41] *See* TriOptima Letter at 2, 5–6 (explaining the portfolio compression process for uncleared swaps).

[42] *See* ISDA/SIFMA at 10 (recommending that the definition of ''security-based swap instrument'' provide for more granular distinctions between different types of transactions within a single asset class).

[43] The Commission is not expressing a view as to whether products with different tenors might or might not be considered together to constitute a class of securities required to be registered under Section 12 of the Exchange Act. *See* Section 12(a) of the Exchange Act, 15 U.S.C. 78l(a); Section 12(g)(1) of the Exchange Act, 15 U.S.C. 78l(g); Rule 12g–1 under the Exchange Act, 17 CFR 240.12g–1.

[44] *See infra* Section X(C) (discussing a registered SDR's policies and procedures relating to UICs).

fields, such as the LEI, some global identifiers will not exist.[45] The commenter believed that requiring registered SDRs to create identifiers would ''result in bespoke implementation among'' registered SDRs that would be of limited value absent an industry standard.[46] The commenter recommended that the Commission consider postponing a requirement to establish identifiers ''until an international taxonomy exists that can be applied consistently.'' [47]

The Commission agrees that a system of internationally recognized product IDs would be preferable to a process under which registered SDRs assign their own product IDs to the same product. Nonetheless, the Commission believes that the use of product IDs, even product IDs created by registered SDRs rather than by an IRSS, could simplify security-based swap transaction reporting and facilitate regulatory oversight of the security-based swap market. In addition, the Commission believes that the requirement for registered SDRs to assign product IDs could provide additional incentive for security-based swap market participants to develop industry-wide product IDs.[48]

One commenter stated that ''[i]ndustry utilities should be considered for assigning unique IDs for transactions, products, and legal entities/market participants.'' [49] As discussed in Section X(B)(2), *infra,* the Commission is recognizing the Global LEI System (''GLEIS''), an industry utility administered by the Regulatory Oversight Committee (''ROC''), as meeting the criteria specified in Rule 903, as adopted. The GLEIS and this comment are discussed in Section X(B)(2), *infra.*

iii. Rule 901(c)(1)(i)

Rule 901(c)(1) requires that, if a security-based swap has no product ID, or if the product ID does not include the information identified in Rule 901(c)(1)(i)–(v), the information specified in Rule 901(c)(1)(i)–(v) must be reported. Final Rule 901(c)(1)(i)–(v) incorporates, with some modifications, information that would have been required under paragraphs (c)(1), (2), (5), (6), (8), and (12) of re-proposed Rule 901, and re-proposed Rule 901(d)(1)(iii).

Rule 901(c)(1)(i), as adopted, generally requires the reporting of information that would have been required to be reported under re-proposed Rules 901(c)(1) and 901(c)(2). Re-proposed Rule 901(c)(1) would have required, in part, reporting of the asset class of a security-based swap.[50] Re-proposed Rule 901(c)(2) would have required the reporting of information identifying the security-based swap instrument and the specific asset(s) or issuer(s) on which the security-based swap is based. Re-proposed Rule 900(dd) would have defined ''security-based swap instrument'' as ''each security-based swap in the same asset class, with the same underlying reference asset, reference issuer, or reference index.'' Rule 901(c)(1)(i), as adopted, requires the reporting of information that identifies the security-based swap, including the asset class of the security-based swap and the specific underlying reference asset(s), reference issuer(s), or reference index. Although the defined term ''security-based swap instrument'' is being deleted from Regulation SBSR for the reasons discussed in Section VII(B)(3), infra, final Rule 901(c)(1)(i) retains the requirement to report the underlying reference asset(s), reference issuer(s), or reference index for the security-based swap, as well as the asset class of the security-based swap.

The Commission received no comments regarding the information required to be reported in Rule 901(c)(1)(i). As stated in the Regulation SBSR Proposing Release, the Commission believes that the reporting and public dissemination of information relating to the asset class of the security-based swap would provide market participants with basic information about the type of security-based swap (*e.g.,* credit derivative or equity derivative) being traded.[51] Similarly, the Commission believes that information identifying the specific reference asset(s), reference issuer(s), or reference index of any security on which the security-based swap is based is fundamental to understanding the transaction being reported, and that a transaction report that lacked such information would not be meaningful.[52] Accordingly, Rule 901(c)(1)(i), as adopted, includes the requirement to report this information.

iv. Rules 901(c)(1)(ii) and (iii)

Re-proposed Rules 901(c)(5) and 901(c)(6) would have required the reporting of, respectively, the effective date of the security-based swap and the scheduled termination date of the security-based swap. These requirements are incorporated into adopted Rules 901(c)(1)(ii) and (iii), which require the reporting of, respectively, the effective date of the security-based swap and the scheduled termination date of the security-based swap. The Commission received no comments regarding the reporting of this information. As stated in the Regulation SBSR Proposing Release, the Commission believes that information specifying the effective date and the scheduled termination date of the security-based swap is fundamental to understanding the transaction being reported, and that a transaction report that lacked such information would not be meaningful.[53] Accordingly, final Rules 901(c)(1)(ii) and (iii) include the requirement to report the effective date and the scheduled termination date, respectively, of the security-based swap.

v. Rule 901(c)(1)(iv)

Re-proposed Rule 901(c)(8) would have required the reporting of any fixed or floating rate payments of a security-based swap, and the frequency of any payments. Re-proposed Rule

[45] *See* DTCC V at 14.

[46] *Id.*

[47] *Id.* The use of identifiers is discussed more fully in connection with Rule 903. *See infra* Section X.

[48] In this regard, the Commission notes that one commenter stated that a ''newly formed ISDA cross-product data working group, with representatives from sell side and buy side institutions, will look at proposed solutions and the practical implications of unique identifiers for the derivatives industry.'' The commenters stated, further, that ''ISDA is committed to provide product identifiers for OTC derivatives products that reflect the FpML standard. . . . In the first instance, this work will focus on product identifiers for cleared products. ISDA/FpML is currently working on a pilot project with certain derivative clearing houses to provide a normalized electronic data representation through a FpML document for each OTC product listed and/or cleared. This work will include the assignment of unique product identifiers.'' ISDA/SIFMA I at 8–9. In addition, the Commission notes that ISDA has issued a white paper that discusses ways of creating unique identifiers for individual products. *See* ISDA, ''Product Representation for Standardized Derivatives'' (April 14, 2011), *available at http://www2.isda.org/functional-areas/technology-infrastructure/data-and-reporting/identifiers/upi-and-taxonomies/* (last visited September 22, 2014), at 4 (stating that one goal of the white paper is to ''[s]implif[y] . . . the trade processing and reporting architecture across the marketplace for the standardized products, as market participants will be able to abstract the trade economics through reference data instead of having to specify them as part of each transaction'').

[49] ISDA/SIFMA I at 8.

[50] ''Asset class'' is defined as ''those security-based swaps in a particular broad category, including, but not limited to, credit derivatives and equity derivatives.'' *See* Rule 900(b), as adopted. As proposed and re-proposed, the definition of ''asset class'' also would have included loan-based derivatives. However, because loan-based derivatives can be viewed as a form of credit derivative, the Commission has removed the reference to loan-based derivatives as a separate asset class and adopted the definition noted above. This revision aligns the definition of ''asset class'' used in Regulation SBSR with the definition used in the SDR Adopting Release.

[51] *See* 75 FR 75213.

[52] *See id.* at 75214.

[53] *See id.*

901(d)(1)(iii) would have required the reporting of the amount(s) and currenc(ies) of any up-front payment(s) and a description of the terms and contingencies of the payment streams of each direct counterparty to the other. In the Regulation SBSR Proposing Release, the Commission noted that the terms of any fixed or floating rate payments and the frequency of any payments are among the terms that would be fundamental to understanding a security-based swap transaction.[54] One commenter echoed the importance of information concerning the payment streams of security-based swaps.[55]

Another commenter stated that proposed Rule 901(d)(1)(iii) was unclear about the proposed form of the description of the terms and contingencies of the payment streams, and that the requirements of proposed Rule 901(d)(1)(iii) appeared to be duplicative of proposed Rule 901(d)(1)(v), which would have required reporting of the data elements necessary for a person to determine the market value of the transaction.[56] The commenter also suggested that the Commission consider the utility of requiring reporting of the terms of fixed or floating rate payments, as required by re-proposed Rule 901(c)(8).[57]

The Commission continues to believe that, for a security-based swap that provides for periodic exchange of cash flows, information concerning those payment streams is fundamental to understanding the terms of the transaction. The Commission acknowledges, however, that re-proposed Rules 901(c)(8), 901(d)(1)(iii), and 901(d)(v) contained overlapping requirements concerning the payment streams of a security-based swap. Accordingly, the Commission is revising Rules 901(c) and 901(d) to streamline and clarify the information required to be reported with respect to the payment streams of a security-based swap.

Specifically, final Rule 901(c)(1)(iv) requires the reporting of any *standardized* fixed or floating rate payments, and the frequency of any such payments. As discussed more fully in Section II(C)(3)(d), *infra*, final Rule 901(d)(3) requires the reporting of information concerning the terms of any fixed or floating rate payments, or otherwise customized or non-standardized payment streams, including the frequency and contingencies of any such payments, to the extent that this information has not been reported pursuant to Rule 901(c)(1). Thus, Rule 901(c)(1)(iv) requires the reporting of information concerning *standardized* payment streams, while Rule 901(d)(3) requires the reporting of information concerning *customized* payment streams. In addition, as discussed more fully below, final Rule 901(d)(5) requires reporting of any additional data elements included in the agreement between the counterparties that are necessary for a person to determine the market value of the transaction, to the extent that such information has not already been reported pursuant to Rule 901(c) or other provisions of Rule 901(d). The Commission believes that these changes to Rules 901(c) and 901(d) will avoid potential redundancies in the reporting requirements and will clarify the information required to be reported with respect to the payment streams of a security-based swap.

Like other primary trade information reported pursuant to Rule 901(c), information about standardized payment streams reported pursuant to Rule 901(c)(1)(iv) will be publicly disseminated. The Commission envisions that, rather than disseminating such information as discrete elements, this information could be inherent in the product ID of a security-based swap that has a product ID. Information concerning non-standard payment streams that is reported pursuant to Rule 901(d)(3), like other secondary trade information, will be available for regulatory purposes but will not be publicly disseminated. Re-proposed Rule 901(c)(8) would have required reporting of the terms of any fixed or floating rate payments, standardized or non-standardized, and the frequency of such payments, and re-proposed Rule 902(a) would have required the public dissemination of that information. In addition, as noted above, one commenter discussed the importance of the availability of information concerning payment streams.[58] Nonetheless, the Commission believes that public dissemination of the non-standard payment terms of a customized security-based swap would be impractical, because a bespoke transaction by definition could have such unique terms that it would be difficult to reflect the full material terms using any standard dissemination protocol. In addition, it is not clear that the benefits of publicly disseminating information concerning these non-standard payment streams would justify the costs of disseminating the information. However, the Commission will have access to regulatory reports of such transactions, which should facilitate regulatory oversight and assist relevant authorities in monitoring the exposures of security-based swap market participants. Accordingly, Rule 901(d)(3), as adopted, requires the reporting of information concerning the terms of any *non-standard* fixed or floating rate payments, or otherwise customized or non-standardized payment streams, including the frequency and contingencies of any such payments.

One commenter expressed the view that, without further clarification, market participants could adopt different interpretations of the requirement in re-proposed Rule 901(c)(8) to report the terms of fixed or floating rate payments, resulting in inconsistent reporting to registered SDRs; the commenter recommended, therefore, limiting the reportable fields to tenor and frequency, where applicable.[59]

The Commission shares the commenter's concerns that, without guidance, market participants could adopt different interpretations of the requirement to report the terms of fixed or floating rate payments. The Commission notes, however, that final Rules 907(a)(1) and 907(a)(2) require a registered SDR to establish and maintain written policies and procedures that enumerate the specific data elements that must be reported and that specify the protocols for submitting information, respectively. The Commission believes that, read together, Rules 907(a)(1) and 907(a)(2) provide registered SDRs with flexibility to determine the appropriate conventions for reporting these data elements, including the terms of a security-based swap's fixed or floating rate payments. Thus, although Rule 901(c) itself does not specify the precise manner for reporting a security-based swap's fixed or floating rate payments, the policies and procedures of registered SDRs must do so. The Commission notes, further, that final Rule 906(c), among other things, requires SDR participants that are registered security-based swap dealers and registered major security-based swap participants to establish,

[54] *See id.*

[55] *See* Benchmark Letter at 1 (stating that "[t]he reference data set [for a security-based swap] must include standard attributes necessary to derive cash flows and any contingent claims that can alter or terminate payments of these contracts. . . . Without these critical pieces of information, users of the trade price dissemination service will be unable to accurately assess reported values").

[56] *See* DTCC II at 10. *See also* DTCC V at 12 (requesting additional clarity with respect to the requirement to report the contingencies of the payments streams of each direct counterparty to the other).

[57] *See* DTCC V at 11.

[58] *See supra* note 55.

[59] *See* DTCC V at 11.

maintain, and enforce written policies and procedures that are reasonably designed to ensure that they comply with any obligations to report information to a registered SDR in a manner consistent with Regulation SBSR.

vi. Rule 901(c)(1)(v)

Re-proposed Rule 901(c)(12) would have required a reporting side to indicate, if applicable, that the information reported under subparagraphs (1)–(11) of re-proposed Rule 901(c) for a customized security-based swap does not provide all of the material information necessary to identify the customized security-based swap or does not contain the data elements necessary to calculate its price. The Commission is adopting the substance of re-proposed Rule 901(c)(12) and locating it in final Rule 901(c)(1)(v). Rule 901(c)(1)(v), as adopted, provides that, if a security-based swap is customized to the extent that the information provided in paragraphs (c)(1)(i) through (iv) of Rule 901 does not provide all of the material information necessary to identify such customized security-based swap or does not contain the data elements necessary to calculate the price, the reporting side must include a flag to that effect. As discussed more fully in Section VI(G), *infra*, the registered SDRs should develop a condition flag to identify bespoke transactions because absent such a flag, users of public reports of bespoke transactions might receive a distorted impression of the market.

One commenter argued that ''publicly disseminated data for trades with a non-standard feature flag activated will be of limited usefulness and could be misleading.'' [60] The commenter expressed the view that dissemination of information regarding highly structured transactions should not occur until an analysis regarding the impact and potential for misleading the investing public has been conducted.[61] A second commenter, however, endorsed the approach being adopted by the Commission.[62] The Commission acknowledges the concerns that the dissemination of transaction reports for highly customized trades could be misleading or of limited usefulness. However, as discussed more fully in Section VI(D)(2)(a), *infra,* the Commission believes that public dissemination of the key terms of a customized security-based swap, even without all of the details of the transaction, could provide useful information to market observers, including information concerning the pricing of similar products and information relating to the relative number and aggregate notional amounts of transactions in bespoke products versus standardized products. In addition, the Commission believes that the condition flag signaling that the transaction is a customized trade, and therefore that the reported information does not provide all of the details of the transaction, will minimize the potential for confusion and help to assure that the publicly disseminated reports of these transactions are not misleading. For these reasons, the Commission is declining, at this time, to undertake the study recommended by the commenter.

A third commenter indicated that Rule 901 should go further and require reporting of additional information necessary to calculate the price of a security-based swap that is so customized that the price cannot be calculated from the reported information.[63] The Commission generally agrees that transaction reports of customized security-based swaps should be as informative and useful as possible. However, it is not clear that the benefits of publicly disseminating all of the detailed and potentially complex information that would be necessary to calculate the price of a highly customized security-based swap would justify the costs of disseminating that information. Accordingly, Rule 901(c)(1)(v), as adopted, does not require reporting of this information, and it will not be publicly disseminated.[64]

This commenter also expressed concern that a ''composite'' security-based swap composed of two swaps grafted together could be used to avoid reporting requirements; the commenter recommended that, if at least one of the transactions could be disaggregated and reported in a format so that its price could be calculated, Regulation SBSR should require that the security-based swap be disaggregated and the component parts be reported separately.[65] In considering the commenter's concern the Commission notes the following:

To begin, the Commission understands that market participants may execute so-called ''package trades'' that are composed of multiple components, or ''legs,'' some of which may be security-based swaps. Though such package trades are executed at a single price, each leg is separately booked and processed. In these cases, Regulation SBSR does in fact require a reporting side to separately report (and for the SDR to separately disseminate) each security-based swap component of the package trade.[66]

However, if a market participant combines the economic elements of multiple instruments into one security-based swap contract, Regulation SBSR requires a single report of the transaction. The Commission understands the commenter's concerns regarding potential attempts to evade the post-trade transparency requirements. Such efforts could undermine Regulation SBSR's goals of promoting transparency and efficiency in the security-based swap markets and impede the Commission's ability to oversee those markets. The Commission does not believe, however, that either a registered SDR or a reporting side should be required to disaggregate a customized security-based swap if it consists of a single contract incorporating elements of what otherwise might have been two or more

[60] DTCC II at 9.

[61] *See id.*

[62] *See* Cleary II at 16 (recommending ''public reporting of a few key terms of a customized swap . . . [with] some indication that the transaction is customized'').

[63] *See* Better Markets I at 7.

[64] The Commission notes that Rule 901(d)(5) requires the reporting of any additional data elements included in the agreement between the counterparties that is necessary to determine the market value of a transaction. Although this information will not be publicly disseminated, it will be available to the Commission and other relevant authorities. Such relevant authorities are enumerated in Section 13(n)(5)(G) of the Exchange Act, 15 U.S.C. 78m(n)(5)(G), which requires an SDR, upon request, to make available all data obtained by the SDR, including individual counterparty trade and position data, to each appropriate prudential regulator, the Financial Stability Oversight Council, the CFTC, the Department of Justice, and any other person that the Commission determines to be appropriate, including foreign financial supervisors, foreign central banks, and foreign ministries.

[65] *See* Better Markets I at 7 (''This enhancement to the Proposed Rules is particularly important with respect to SBS comprised of two swaps grafted together. Such composite SBS can be used to avoid reporting requirements. Even worse they can be used to obfuscate the real financial implications of a transaction. Accordingly, if an SBS can be disaggregated into two or more transactions, and at least one of those disaggregated transactions can be reported in a format so that price can be calculated, then the rules should require that the SBS be disaggregated and reported in that form''); Better Markets II at 3 (stating that complex transactions must be broken down into meaningful components); Better Markets III at 4–5 (stating that the Commission should require reporting of data on disaggregated customized security-based swaps).

[66] In addition, as discussed more fully in Section VI(G), *infra,* in developing its policies and procedures, a registered SDR should consider requiring participants to identify the individual component security-based swaps of such a trade as part of a package transaction, and should consider disseminating reports of the individual security-based swap components of the package trade with a condition flag that identifies them as part of a package trade. Absent such a flag, observers of public reports of package transactions might obtain a distorted view of the market.

security-based swaps. In the absence of evidence of a significant amount of such ''composite'' security-based swap transactions and structuring other than through package trades, the Commission does not at this time believe that devising protocols for disseminating them in a disaggregated fashion would be practical. Importantly, however, and as discussed more fully in Section VI(D)(2)(a), *infra*, the primary trade information of any complex or bespoke security-based swap, including ''composite'' security-based swaps as described by the commenter, will be publicly disseminated, as required by Rule 902(a), including the specific underlying reference asset(s), reference issuer(s), or reference index for the transaction, as required by Rule 901(c)(1).[67] The Commission believes that the public dissemination of the primary trade information, even without all of the material economic terms of the transaction that could affect its pricing, could provide market observers with useful information, including information concerning the pricing of similar products and the relative number and aggregate notional amounts of transactions in complex and other bespoke transactions versus transactions in standardized products. The Commission further notes that since all of the material economic terms of a ''composite'' security-based swap must be reported to a registered SDR, including the data elements required by Rule 901(d),[68] the Commission itself will have complete access to these details.[69]

The commenter also expressed the view that Regulation SBSR should clearly define the meaning of a security-based swap that is so customized that its price is not ascertainable.[70] The Commission does not believe that it is necessary to further define the term ''customized security-based swap'' for purposes of Rule 901(c)(1)(v). The condition flag required under adopted Rule 901(c)(1)(v) will notify market participants that the security-based swap being reported does not have a product ID and is customized to the extent that the information provided in Rules 901(c)(1)(i)–(iv) does not provide all of the material information necessary to identify the security-based swap or does not contain the data elements necessary to calculate the price. Thus, market participants will know that a customized security-based swap transaction was executed, and that the information reported pursuant to Rules 901(c)(1)(i)–(iv) provides basic but limited information about the transaction. The Commission believes, further, that Rule 901(c)(1)(v) provides clear guidance with respect to when a transaction is customized to the extent that the reporting side must attach a condition flag that identifies the transaction as a bespoke transaction, *i.e.*, when the information reported pursuant to Rules 901(c)(1)(i)–(iv) does not provide all of the material information necessary to identify the security-based swap or does not contain the data elements necessary to calculate the price. Accordingly, the Commission does not believe that it is necessary, at this time, to further define what constitutes a customized security-based swap for purposes of Regulation SBSR.

c. Rule 901(c)(2)

Re-proposed Rule 901(c)(4) would have required reporting of the date and time, to the second, of the execution of a security-based swap, expressed using Coordinated Universal Time (''UTC'').[71] In the Regulation SBSR Proposing Release, the Commission stated that information concerning the time of execution would allow security-based swap transactions to be ordered properly, and would provide the Commission with a detailed record of when a security-based swap was executed.[72] The Commission further noted that, without the time of execution, market participants and relevant authorities would not know whether the transaction reports that they are seeing reflect the current state of the market.[73] In both the proposal and the re-proposal, the Commission defined ''time of execution'' to mean ''the point at which the counterparties to a security-based swap become irrevocably bound under applicable law.'' [74]

One commenter expressed the view that time of execution should be reported at least to the second, and by finer increments where practicable.[75] A second commenter raised timestamp issues in connection with proposed Rule 901(f), which would have required a registered SDR to timestamp transaction information submitted to it under Rule 901. The commenter stated that especially for markets for which there are multiple security-based swap execution facilities and markets where automated, algorithmic trading occurs, ''the sequencing of trade data for transparency and price discovery, as well as surveillance and enforcement purposes, will require much smaller increments of time-stamping.'' [76] The commenter urged the Commission to revise proposed Rule 901(f) to require a registered SDR to time stamp information that it receives in increments shorter than one second, stating that time stamps shorter than one second are technologically feasible, affordable, and in use.[77]

The Commission understands that trading in the security-based swap market does not yet occur as fast or as frequently as in the equities market, which makes recording the time of security-based swap executions in subsecond increments less necessary for surveillance purposes. While some market participants may have the capacity to record trades in subsecond intervals, others may not. Given the

[67] One commenter stated its view that ''proprietary baskets'' should qualify as non-disseminated information, and requested that Regulation SBSR specifically recognize this as an example of non-disseminated information. *See* ISDA IV at 17 (stating that reportable security-based swaps may include customized narrow-based baskets that a counterparty deems proprietary to its business and for which public disclosure would compromise its anonymity and negatively impact its trading activity). Rule 902(a), as adopted, requires a registered SDR to publicly disseminate, for each transaction, the primary trade information required to be reported by Rule 901(c), as adopted, which includes the specific underlying reference asset(s), reference issuer(s), or reference index. The Commission continues to believe that the primary trading terms of a security-based swap should be disseminated to help facilitate price discovery. *See infra* Section VI(A).

[68] *See infra* Section II(B)(3)(e) (discussing requirement in Rule 901(d)(5) that, to the extent not provided pursuant to other provisions of Rules 901(c) and 901(d), all data elements included in the agreement between the counterparties that are necessary for a person to determine the market value of the transaction must be reported).

[69] *See infra* Section V(B)(1) (noting that the Commission anticipates proposing for public comment detailed specifications of acceptable formats and taxonomies that would facilitate an accurate interpretation, aggregation, and analysis by the Commission of security-based swap data submitted to it by an SDR); *supra* Section II(A)(2)(b)(v) (explaining that the Commission will have access to regulatory reports of bespoke security-based swap transactions, which should facilitate regulatory oversight and assist relevant authorities in monitoring the exposures of security-based swap market participants).

[70] *See* Better Markets I at 7 (''The Proposed Rules also represent a critically important opportunity to shed light on the nature of 'customized' swaps. Since the inception of the debate over disclosure and clearing in connection with financial regulation, the concept of the 'customized' or 'bespoke' transactions has figured prominently, yet these terms remain poorly understood in real world terms. The Proposed Rules should clearly define the meaning of SBS that are so customized that price is not ascertainable'').

[71] UTC is defined by the International Telecommunication Union (ITU–R) and is maintained by the International Bureau of Weights and Measures (BIPM). *See http://www.itu.int/net/newsroom/wrc/2012/reports/atomic_time.aspx* (last visited September 22, 2014).

[72] *See* 75 FR 75213.

[73] *See id.*

[74] *See* re-proposed Rule 900(ff).

[75] *See* Barnard I at 2.

[76] Better Markets I at 9.

[77] *See id.*

potential costs of requiring all market participants to utilize subsecond timestamps, the Commission believes that it is not necessary or appropriate at this time to require reporting of the time of execution in subsecond increments.[78] Accordingly, the Commission is adopting Rule 901(c)(4) as proposed and re-proposed, but renumbering it as final Rule 901(c)(2). The Commission will continue to monitor developments in the security-based swap market and could in the future reconsider whether reporting time of execution in subseconds would be appropriate.

One commenter discussed the time of execution for a voice trade in the context of proposed Rule 910(a), which addressed the reporting of pre-enactment security-based swaps.[79] The commenter noted that in the Regulation SBSR Proposing Release, the Commission stated that ''proposed Rule 910(a) would not require reporting parties to report any data elements (such as the time of execution) that were not readily available. Therefore, proposed Rule 910(a) would not require reporting parties to search for or reconstruct any missing data elements.'' [80] The commenter disagreed with this assertion in the context of voice trades, stating that the time of entry of the voice trade into the system is typically provided, but not the actual execution time of the trade. The commenter stated that ''[p]roviding the actual execution time in the case of voice trades would then prove extremely challenging and invasive for the marketplace.'' [81] Similarly, one commenter requested that the ''Commission clarify that participants are not required to provide trade execution time information for pre-enactment security-based swap transactions and that going-forward, such information need only be provided when industry-wide time stamping practices are implemented.'' [82]

With respect to these concerns, the Commission notes, first, that it is not adopting Rule 910, but is proposing a new compliance schedule for Rules 901, 902, 903, 904, 905, 906, and 908 of Regulation SBSR in the Regulation SBSR Proposed Amendments Release. The Commission emphasizes, however, that proposed Rule 910(a) would not have required market participants to report information for a pre-enactment security-based swap that was not readily available, or to reconstruct that information. Thus, Rule 910(a), as proposed, would not have required market participants to provide the time of execution for an orally negotiated pre-enactment security-based swap, unless such information was readily available. Likewise, final Rule 901(i) does not require reporting of the date and time of execution for an orally negotiated pre-enactment or transitional security-based swap, unless such information is readily available.[83] However, for all other security-based swaps, including voice trades, final Rule 901(c)(2) requires reporting of the date and time of execution, to the second, of the security-based swap. The Commission noted in the Regulation SBSR Proposing Release that trades agreed to over the phone would need to be systematized by being entered in an electronic system that assigns a time stamp to report the date and time of execution of a security-based swap.[84] The Commission continues to believe that it is consistent with Congress' intent for orally negotiated security-based swap transactions to be systematized as quickly as possible.[85] The Commission notes, further, that market participants also must report the time of execution for voice-executed trades in other securities markets (*e.g.*, equities and corporate bonds).[86] Knowing the date and time of execution of a security-based swap is important for reconstructing trading activity and for market surveillance purposes. Accordingly, the Commission continues to believe that the regulatory interest in having information regarding the date and time of execution for all security-based swaps, including orally negotiated security-based swaps, justifies the burden on market participants of recording and reporting this information.

In addition, the Commission is adopting, as proposed and re-proposed, the requirement for all times of execution reported to and recorded by registered SDRs to be in UTC. In the Regulation SBSR Proposing Release, the Commission explained its reasons for proposing to require that the date and time of execution be expressed in UTC.[87] The Commission noted that security-based swaps are traded globally, and expected that many security-based swaps subject to the Commission's reporting and dissemination rules would be executed between counterparties in different time zones. In the absence of a uniform time standard, it might not be clear whether the date and time of execution were being expressed from the standpoint of the time zone of the first counterparty, the second counterparty, or the registered SDR. Mandating a common standard for expressing date and time would alleviate any potential confusion as to when the security-based swap was executed. The Commission believed that UTC was an appropriate and well known standard suitable for purposes of reporting the time of execution of security-based swaps. The Commission received no comments regarding the use of UTC for reporting the time of execution. For the reasons set out in the Regulation SBSR Proposing Release, the Commission continues to believe that UTC is appropriate for security-based swap transaction reporting. Accordingly, the Commission is adopting this requirement as proposed and re-proposed.

Finally, the Commission is adopting the definition of ''time of execution'' as proposed and re-proposed, and renumbering it as final Rule 900(ii). One commenter stated that the time at which a transaction becomes legally binding may not be the same for all products.[88] The commenter further noted that, in some cases primary terms are not formed until the security-based swap is confirmed, and that the full terms of a total return swap might not be formed until the end of the day ''and therefore the [total return swap] is not executed and confirmed until the end of the day.'' [89] A second commenter stated that ''the obligation to report should not be triggered until price, size, and other transaction terms required to be reported are available.'' [90] The Commission understands the concerns of these commenters and believes that the definition of ''time of execution'' provides sufficient flexibility to address these commenters' concerns. For example, if the key terms of a security-based swap, such as price or size, are so indefinite that they cannot be reported to a registered SDR until some time after

[78] However, a registered SDR could, in its policies and procedures, allow its participants to report using subsecond timestamps.

[79] As discussed in Section I(F), *supra,* the Commission is not adopting Rule 910.

[80] *See* 75 FR 75278–79.

[81] ISDA/SIFMA I at 11.

[82] ISDA I at 5.

[83] For pre-enactment and transitional security-based swaps, final Rule 901(i) requires reporting of the information required under Rules 901(c) and 901(d), including the date and time of execution, only to the extent that such information is available.

[84] *See* 75 FR 75213.

[85] *See id.*

[86] *See, e.g.,* FINRA Rule 6230(c)(8) (requiring transactions reported to TRACE to include the time of execution); FINRA Rule 6622(c)(5) (requiring last-sale reports for transactions in OTC Equity Securities and Restricted Securities to include the time of execution expressed in hours, minutes, and seconds).

[87] *See* 75 FR 75213.

[88] *See* ISDA/SIFMA I at 7.

[89] *Id.*

[90] Cleary II at 6. *See also* ISDA/SIFMA I at 15 (''for some transaction types . . . the price or size of the transaction cannot be determined at the time the swap is negotiated''); ISDA IV at 10.

the counterparties agree to preliminary terms, the counterparties may not have executed the security-based swap under applicable law. Alternatively, even if the counterparties determine that their preliminary agreement constitutes an execution, the reporting timeframe adopted herein, which will allow a security-based swap to be reported at any point up to 24 hours after the time of execution, should address the concerns raised by the commenters.

A third commenter urged the Commission to revise the definition to equate time of execution with ''the time of execution of the confirmation.'' [91] The Commission declines to do so. While confirmation is an important aspect of post-trade processing, performance of the actions necessary to confirm a transaction is within the discretion of the counterparties and their agents. Defining the ''time of execution'' to mean the time that a confirmation is issued could create incentives for counterparties to delay confirmation and thus the reporting of the transaction. The Commission notes that Section 13(m)(1)(A) of the Exchange Act [92] defines ''real-time public reporting'' as reporting certain security-based swap data ''as soon as technologically practicable after the time at which the security-based swap transaction has been executed.'' The Commission believes this provision is most appropriately implemented by linking obligations to the time at which the counterparties become bound to the terms of the transaction—*i.e.,* the time of execution—rather than some indefinite point in the future, such as the time when the confirmation is issued.

d. Rule 901(c)(3)

Re-proposed Rule 901(c)(7) would have required the reporting of the price of a security-based swap. Re-proposed Rule 901(d)(1)(iii) would have required the reporting of the ''amount(s) and curren(cies) of any up-front payment(s) and a description of the terms and contingencies of the payment streams of each direct counterparty to the other.'' Final Rule 901(c)(3) combines these elements and requires the reporting of ''[t]he price, including the currency in which the price is expressed and the amount(s) and currenc(ies) of any up-front payments.'' [93] The Commission believes that including in final Rule 901(c)(3) the explicit requirement to report the currency in which the price is expressed will help to clarify the information required to be reported.[94] Re-proposed Rule 901(c)(3) is being re-numbered as final Rule 901(c)(4).[95]

Rule 901(c)(3), as adopted, requires the reporting of the amount(s) and currenc(ies) of any up-front payments, a requirement that was included in re-proposed Rule 901(d)(1)(iii). The Commission believes that information concerning the amount(s) and currenc(ies) of any up-front payment(s) will help regulators and market observers understand the reported price of a security-based swap, and that the public dissemination of this information will further the transparency goals of Title VII. The Commission also believes that Rule 901(c) will be simpler if all considerations relating to the price are consolidated into a single provision. Accordingly, Rule 901(c)(3), as adopted, requires the reporting and public dissemination of the amount(s) and currenc(ies) of any up-front payment(s) along with other pricing information for the security-based swap.

As discussed in the Regulation SBSR Proposing Release, the price of a security-based swap could be expressed in terms of the commercial conventions used in that asset class.[96] The Commission recognized that the price of a security-based swap generally might not be a simple number, as with stocks, but would likely be expressed in terms of the quoting conventions of the security-based swap. For example, a credit default swap could be quoted in terms of the economic spread—which is variously referred to as the ''traded spread,'' ''quote spread,'' or ''composite spread''—expressed as a number of basis points per annum. Alternately, a credit default swap might be quoted in terms of prices representing a discount or premium over par.[97] In contrast, an equity or loan total return swap might be quoted in terms of a LIBOR-based floating rate payment, expressed as a floating rate plus a fixed number of basis points.[98] As discussed further in Section IV, *infra,* final Rule 907(a)(1) requires a registered SDR to establish, maintain, and make publicly available policies and procedures that specify the data elements of a security-based swap that must be reported, including elements that constitute the price. The Commission believes that, because of the many different conventions that exist to express the price in various security-based swap markets and new conventions that might arise in the future, registered SDRs should have flexibility to select appropriate conventions for denoting the price of different security-based swap products.

One commenter expressed concern that disseminating prices of margined and unmargined transactions together could mislead the market about the intrinsic prices of the underlying contracts.[99] Noting that the CFTC proposed a field for ''additional price notation'' that would be used to provide information, including margin, that would help market participants evaluate the price of a swap, the commenter recommended that the Commission and the CFTC harmonize their approaches to assure that the market has an accurate picture of prices.[100] The Commission agrees that publicly disseminated transaction reports should be as informative as possible. However, the Commission believes, at this time, that it could be impractical to devise additional data fields for describing the potentially complex margin requirements governing a security-based swap. Furthermore, it could be difficult if not impossible to attribute a portion of the price to a particular margin arrangement when the overall price represents the aggregation of a number of different factors into a single variable. The Commission notes that the bespoke flag required by Rule 901(c)(1)(v) is designed to inform market observers when a security-based swap is customized to the extent that the other data elements required by Rule 901(c)(1) do not provide all of the material information necessary to identify the security-based swap or provide sufficient information to calculate the price.

Another commenter expressed concern that disseminating the terms of the floating rate payment for an equity swap, which is often comprised of a benchmark rate plus or minus a spread and thus contains information about the direction of a customer transaction (positive spreads indicate a customer long swap and negative spreads indicate a customer short swap) may harm customers by offering other market participants the opportunity to anticipate their execution strategy.[101]

[91] MFA I at 5.

[92] 15 U.S.C. 78m(m)(1)(A).

[93] *Cf.* Section II(B)(3)(c), *infra* (describing Rule 901(d), which enumerates data elements that will not be subject to public dissemination).

[94] The addition of the reference to currency also is consistent with re-proposed Rule 901(c)(3), which would have required reporting of the notional amount(s) of the security-based swap and the currenc(ies) in which the notional amount(s) is expressed.

[95] *See infra* Section II(B)(2)(b)(vi)(e).

[96] *See* 75 FR 75214. Final Rule 900(z) defines ''price'' to mean ''the price of a security-based swap transaction, expressed in terms of the commercial conventions used in the asset class.''

[97] *See id.*

[98] *See id.*

[99] *See* CCMR I at 4.

[100] *See id.*

[101] *See* ISDA IV at 17.

The commenter believes that the spread value should thus be masked for equity security-based swaps when disclosing the price or terms of the floating rate payment.[102] As noted above, the Commission believes that publicly disseminated transaction reports should be as informative as possible. The floating rate payment of an equity security-based swap, including the spread, is an important part of the price of an equity security-based swap, and as such the Commission continues to believe that it should be disseminated. Not disseminating this information would undermine one of the key aspects of public dissemination, namely price discovery. The Commission further understands that in other markets—such as the cash equity market and the bond market—similar information is publically disclosed or can be inferred from public market data, which informs on the direction of the customer transaction.[103]

e. Rule 901(c)(4)

Re-proposed Rule 901(c)(3) would have required reporting of the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed. The Commission is adopting this rule as re-proposed, but re-numbering it as Rule 901(c)(4).

The Commission received two comments regarding the reporting and public dissemination of the notional amount of a security-based swap. One commenter believed that, ''in the case of some asset classes, there is not a universal definition of the notional amount of the trade. This is particularly the case where the notional amount is not confirmable information.'' [104] To address this issue, the commenter recommended that the Commission provide guidelines, such as those developed by the Federal Reserve Bank of New York, for reporting the notional amount of a security-based swap.[105]

As discussed below, final Rules 907(a)(1) and 907(a)(2) require a registered SDR to establish and maintain written policies and procedures that enumerate the specific data elements that must be reported and that specify the protocols for submitting information, respectively. The Commission believes that, read together, Rules 907(a)(1) and 907(a)(2) provide registered SDRs with flexibility to determine the appropriate conventions for reporting all required data elements, including the notional amount. Thus, although Rule 901(c) itself does not specify the precise manner for reporting a security-based swap's notional amount, the policies and procedures of registered SDRs must do so. The Commission believes that a registered SDR could choose to incorporate the guidance noted by the commenter, or other appropriate guidance, into its policies and procedures for reporting notional amounts.

Another commenter suggested that the Commission, to mitigate adverse impacts on market liquidity, should—like the CFTC—adopt masking thresholds, rather than requiring public dissemination of the precise notional amount of a security-based swap transaction.[106] The commenter noted that FINRA's Trade Reporting and Compliance Engine (''TRACE'') system [107] uses masking conventions, and suggested applying that approach to the swap and security-based swap markets by ''computing how much market risk is represented by the TRACE masking thresholds and using those numbers to map the masking thresholds into other asset classes.'' [108]

The Commission appreciates the commenter's concerns regarding the uncertainty of the potential effects of public dissemination of security-based swap transaction reports on liquidity in the security-based swap market. As discussed further in Section VII, *infra,* the rules adopted in this release will allow the reporting, on an interim basis, of a security-based swap transaction at any time up to 24 hours after the time of execution (or, if 24 hours after the time of execution would fall on a day that is not a business day, by the same time on the next day that is a business day). This timeframe is designed in part to minimize potential adverse impacts of public dissemination on liquidity during the interim phase of Regulation SBSR's implementation, as market participants grow accustomed to operating in a more transparent environment. Accordingly, the Commission does not believe that it is necessary at this time to adopt a masking convention for purposes of reporting and publicly disseminating the notional amount of security-based swap transactions.[109]

f. Rule 901(c)(5)

Rule 901(c)(10), as proposed and re-proposed, would have required the reporting side to indicate whether both counterparties to a security-based swap are security-based swap dealers. In the Regulation SBSR Proposing Release, the Commission stated its preliminary belief that such an indication would enhance transparency and provide more accurate information about the pricing of security-based swap transactions.[110] The Commission noted, further, that prices of security-based swap transactions involving a dealer and non-dealer are typically ''all-in'' prices that include a mark-up or mark-down, while interdealer transactions typically do not. Thus, the Commission believed that requiring an indication of whether a security-based swap was an interdealer transaction or a transaction between a dealer and a non-dealer counterparty would enhance transparency by allowing market participants to more accurately assess the reported price of a security-based swap.[111]

Commenters expressed mixed views regarding this proposed requirement. One commenter supported a requirement to include the counterparty type in security-based swap transaction reports.[112] Another commenter, however, recommended that the Commission eliminate the interdealer indication because ''[e]xcluding this field from the information required to be reported to [a registered SDR] in real time will bring the scope of required

[102] *See id.*

[103] In the bond markets, the side of the customer is reported on TRACE. See *http://www.finra.org/Industry/Compliance/MarketTransparency/TRACE/Announcements/P039007.* In the cash equity markets, the side of the initiator of a transaction is, for many exchanges, provided as a data element on direct data feeds. It can also be inferred according to whether the trade was executed at the bid or offer.

[104] ISDA/SIFMA I at 12.

[105] *See id.* The commenter refers to the guidelines included under ''Line Item Instructions for Derivatives and Off-Balance-Sheet Item Schedule HC–L'' in the Board of Governors of the Federal Reserve System's ''Instructions for Preparation of Consolidated Financial Statements for Bank Holding Companies Reporting Form FR Y–9C.'' *See* ISDA/SIFMA I at 12, note 13.

[106] *See* J.P. Morgan Letter at 12. *See also* ISDA IV at 16 (recommending the use of a notional cap in each asset class).

[107] TRACE is a FINRA facility to which FINRA member firms must report over-the-counter transactions in eligible fixed income securities. *See generally http://www.finra.org/Industry/Compliance/MarketTransparency/TRACE/* (last visited September 22, 2014).

[108] *Id.* at 13.

[109] The Commission anticipates soliciting comment on issues relating to block trades, including the possibility of utilizing masking thresholds, at a later date. *See infra* Section VII.

[110] *See* 75 FR 75214.

[111] *See id.*

[112] *See* Benchmark Letter at 2. The commenter also suggested that it would be useful to include an entry for ''end user,'' similar to the ''Producer/Merchant/Producer/User'' designation used in agricultural futures reports. *See id.* The Commission does not believe, at this time, that it is necessary to require a specific end-user indication. Under final Rule 901(c)(5), a transaction involving two registered security-based swap dealers must have an indication to that effect. An observer of a transaction report without that indicator will be able to infer that the transaction involved at least one side that does not have a registered security-based swap dealer.

data in line with existing dissemination functionality.'' [113] A third commenter expressed concern that disseminating information that both counterparties are security-based swap dealers would reduce the anonymity of participants, ultimately resulting in ''worse pricing and reduced liquidity for end-users.'' [114]

The Commission believes that publicly disseminating an indication of whether both sides of a security-based swap are registered security-based swap dealers would enhance transparency in the security-based swap market by helping market participants to assess the reported price of a security-based swap. Although the Commission understands the concerns about potential burdens that could result from changes to existing dissemination practices, the required indicator should not impose significant burdens. Furthermore, the Commission believes that any potential burden created by requiring the indicator will be justified by the transparency benefits of publicly disseminating this information. The Commission notes that flagging transactions between two registered security-based swap dealers does indeed provide information to the public that the transaction involved two dealers, thus restricting the set of possible counterparties. However, since a majority of security-based swap transactions presently have a dealer as one of the counterparties, an interdealer flag is unlikely to enable market observers to identify counterparties to particular transactions. Also, although there is a limited group of entities that likely would be required to register as security-based swap dealers that are currently active in the security-based swap market, this number is more than two.[115] The Commission also notes that in the bond market interdealer transactions are flagged as part of TRACE's public dissemination of corporate bond trades. Therefore, the Commission does not believe that flagging transactions between two registered security-based swap dealers would ultimately result in ''worse pricing and reduced liquidity for end-users.'' [116]

The Commission, therefore, is adopting this requirement as final Rule 901(c)(5), with one revision. The Commission has added the word ''registered'' before the term ''security-based swap dealer.'' Therefore, the final rule requires an indication only when there is a registered security-based swap dealer on both sides of the transaction. As discussed further below, the Commission seeks to avoid imposing costs on market participants for assessing whether or not they are security-based swap dealers solely for purposes of Regulation SBSR.[117] Therefore, counterparties would have to be identified for purposes of Rule 901(c)(5), as adopted, only if they are *registered* security-based swap dealers.

g. Rule 901(c)(6)

Re-proposed Rule 901(c)(9) would have required the reporting side to indicate whether or not a security-based swap would be cleared by a clearing agency. This requirement is being adopted substantially as proposed but numbered as Rule 901(c)(6), with an additional clarification, described below. In the Regulation SBSR Proposing Release, the Commission noted that the use of a clearing agency to clear a security-based swap could affect the price of the security-based swap because counterparty credit risk might be diminished significantly if the security-based swap were centrally cleared.[118] Thus, the Commission preliminarily believed that information concerning whether a security-based swap would be cleared would provide market participants with information that would be useful in assessing the reported price of the security-based swap, thereby enhancing price discovery.[119] One commenter agreed, stating that it ''will likely also be necessary to identify whether a price is associated with a bilateral trade or a cleared trade . . . as these distinctions may well have price impacts.'' [120]

The Commission continues to believe that information concerning whether a security-based swap will be cleared is useful in assessing the price of the security-based swap and will facilitate understanding of how risk exposures may change after the security-based swap is executed. Accordingly, final Rule 901(c)(6) requires the reporting side to indicate ''whether the direct counterparties intend that the security-based swap will be submitted to clearing.'' Reporting of whether the direct counterparties *intend* that the security-based swap will be submitted to clearing, rather than whether the security-based swap *will be cleared,* as originally proposed, more accurately reflects the process of entering into and clearing a security-based swap transaction. It may not be known, when the transaction is reported, whether a registered clearing agency will in fact accept the security-based swap for clearing. The Commission received no comments on this issue. The Commission believes, however, that the modified language enhances the administration of the rule.

The Commission notes that, in some cases, the identity of the registered clearing agency that clears a security-based swap could be included in the product ID of a security-based swap. If the identity of the registered clearing agency is included in the product ID, no information would have to be separately reported pursuant to Rule 901(c)(6).

h. Rule 901(c)(7)

Re-proposed Rule 901(c)(11) would have required a reporting side to indicate, if applicable, that a security-based swap transaction does not accurately reflect the market. In the Regulation SBSR Proposing Release, the Commission noted that, in some instances, a security-based swap transaction might not reflect the current state of the market.[121] This could occur, for example, in the case of a late transaction report, which by definition would not represent the current state of the market, or in the case of an inter-affiliate transfer or assignment, where the new counterparty might not have an opportunity to negotiate the terms, including the price, of taking on the position.[122] The Commission believed that there might not be an arm's length negotiation of the terms of the security-based swap transaction, and disseminating a transaction report without noting that fact would be inimical to price discovery. Accordingly, Rule 901(c)(11), as proposed and as re-proposed, would have required a reporting side to note such circumstances in its transaction report to the registered SDR.

Rule 907(a)(4), as proposed and as re-proposed, would have required a registered SDR to establish and maintain written policies and procedures that describe, among other things, how a reporting side would report security-based swap transactions that, in the estimation of the registered SDR, do not accurately reflect the market. The Commission noted its expectation that these policies and procedures would require, among other things, different

[113] DTCC V at 11.

[114] ISDA IV at 16.

[115] Historical data reviewed by the Commission suggest that, among an estimated 300 reporting sides, approximately 50 are likely to be required to register with the Commission as security-based swap dealers. *See infra* Section XXI(B)(3).

[116] *See* ISDA IV at 16.

[117] *See infra* notes 284 to 285 and accompanying text.

[118] *See* 75 FR 75214.

[119] *See id.*

[120] Cleary II at 20, note 56.

[121] *See* 75 FR 75214.

[122] *See id.* at 75214–15.

indicators being applied in different situations.[123]

One commenter suggested that Rule 901 should require the counterparties to a security-based swap to disclose specific reasons why a security-based swap does not accurately reflect the market because it would not be possible to understand the reported prices without that information.[124] The commenter also stated that the Commission, rather than registered SDRs, should specify the indicators used for such transaction reports.[125]

The Commission agrees in general that an effective regime for public dissemination should provide market observers with appropriate information to assist them in understanding the disseminated transaction information. The Commission also agrees with the commenter that it could be useful to market observers to provide more specific information about particular characteristics of or circumstances surrounding a transaction that could affect its price discovery value. Therefore, after careful consideration, the Commission is adopting the substance of re-proposed Rule 901(c)(11), but is modifying the rule text to reflect final Rule 907(a)(4), and is renumbering the requirement as Rule 901(c)(7). Rule 901(c)(7), as adopted, requires reporting of any applicable flag(s) pertaining to the transaction that are specified in the policies and procedures of the registered SDR to which the transaction will be reported. Rule 907(a)(4)(i) requires a registered SDR to establish and maintain written policies and procedures for ''identifying characteristic(s) of a security-based swap, or circumstances associated with the execution of a security-based swap, that could, in the fair and reasonable estimation of a registered security-based swap data repository, cause a person without knowledge of these characteristic(s) or circumstance(s) to receive a distorted view of the market.'' A registered SDR also must establish flags to denote these characteristic(s) or circumstance(s).[126] As discussed in Section VI(G), *infra,* the Commission generally believes that a registered SDR should consider providing condition flags identifying the following: Inter-affiliate security-based swaps; transactions resulting from netting or compression exercises; transactions resulting from a ''forced trading session'' conducted by a clearing agency; transactions reported late; transactions resulting from the default of a clearing member; and package trades. The Commission believes that these condition flags, and others that registered SDRs may adopt in the future, should provide additional information that will help to prevent market observers from receiving a distorted view of the market. The Commission believes, further, that these condition flags address the commenter's recommendation that security-based swap transaction reports identify the specific reasons why a transaction does not accurately reflect the market.

The Commission disagrees, however, with the commenter's suggestion that a Commission rule rather than the policies and procedures of a registered SDR should identify the specific characteristics or circumstances that must be reported to prevent a transaction report from presenting a distorted view of the market. The Commission continues to believe that requiring registered SDRs to develop, maintain, and require the use of condition flags, and to modify them as needed, will facilitate the development of a flexible reporting regime that is better able to respond quickly to changing conditions in the security-based swap market. This flexibility will help to assure that reported transaction information remains meaningful as the security-based swap market evolves over time.

B. Rule 901(d)—Secondary Trade Information

1. Description of Proposed and Re-Proposed Rule

Rule 901(d)(1), as proposed and as re-proposed, would have required the reporting of certain secondary trade information concerning a security-based swap. Information reported pursuant to Rule 901(d)(1) would be available to regulatory authorities only and would not be publicly disseminated. Rule 901(d)(1), as re-proposed, would have required the reporting of the following secondary trade information to a registered SDR: (1) The participant ID of each counterparty; (2) as applicable, the broker ID, desk ID, and trader ID of the direct counterparty on the reporting side; (3) the amount(s) and currenc(ies) of any up-front payment(s) and a description of the terms and contingencies of the payment streams of each direct counterparty to the other; (4) the title of any master agreement, or any other agreement governing the transaction (including the title of any document governing the satisfaction of margin obligations), incorporated by reference and the date of any such agreement; (5) the data elements necessary for a person to determine the market value of the transaction; (6) if applicable, and to the extent not provided pursuant to Rule 901(c), the name of the clearing agency to which the security-based swap will be submitted for clearing; (7) if the security-based swap is not cleared, whether the exception in Section 3C(g) of the Exchange Act[127] was invoked; (8) if the security-based swap is not cleared, a description of the settlement terms, including whether the security-based swap is cash-settled or physically settled, and the method for determining the settlement value; and (9) the venue where the security-based swap was executed.[128]

As discussed in the Regulation SBSR Proposing Release, the Commission believed that the information required to be reported by proposed Rule 901(d) would facilitate regulatory oversight and monitoring of the security-based swap market by providing comprehensive information regarding security-based swap transactions and trading activity.[129] The Commission believed, further, that this information would assist the Commission in detecting and investigating fraud and trading abuses in the security-based swap market.[130]

Re-proposed Rule 901(d)(2) specified timeframes for reporting the secondary trade information required to be reported under Rule 901(d)(1). Rule 901(d)(2), as re-proposed, would have required the reporting of secondary trade information promptly, but in no event later than: (1) 15 minutes after the time of execution of a security-based swap that is executed and confirmed electronically; (2) 30 minutes after the time of execution for a security-based swap that is confirmed electronically but not executed electronically; or (3) 24 hours after the time of execution for a security-based swap that is not executed or confirmed electronically.

2. Final Rule 901(d)

As discussed more fully below, the Commission is adopting Rules 901(d)(1)

[123] *See id.* at 75215.

[124] *See* Better Markets I at 6.

[125] *See id.* at 7 (''Such disclosure should not be left to the discretion of the SDRs, but should instead be required by the rules'').

[126] *See* Rule 907(a)(4)(ii).

[127] 15 U.S.C. 78c–3(g).

[128] Rule 901(d)(1), as re-proposed, was substantially similar to Rule 901(d)(1), as proposed, but made several technical changes. Rule 901(d)(1), as re-proposed, revised the rule to add references to the reporting side, the direct counterparty on the reporting side, and secondary trade information.

[129] *See* 75 FR 75217. Furthermore, to the extent that the Commission receives information that is reported under Rule 901(d), the Commission anticipates that it will keep such information confidential, to the extent permitted by law. *See id.* at note 59.

[130] *See id.*

substantially as re-proposed, although it is making several clarifying and technical changes to address issues raised by commenters.

The Commission is not adopting the 15-minute, 30-minute, and 24-hour timeframes in re-proposed Rule 901(d)(2). Instead, final Rule 901(d) requires a reporting side to report the information required under Rule 901(d) within the timeframes specified by Rule 901(j).[131] Because re-proposed Rule 901(d)(2) is not being adopted, re-proposed Rule 901(d)(1) is renumbered as final Rule 901(d), and re-proposed Rules 901(d)(1)(i)–(ix), which would identify the categories of secondary trade information required to be reported, are renumbered as final Rules 901(d)(1)–(9).

Rule 901(d), as adopted, requires the reporting side to report the following secondary trade information: (1) The counterparty ID or execution agent ID of each counterparty, as applicable; (2) as applicable, the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID of the direct counterparty on the reporting side; (3) to the extent not provided pursuant to Rule 901(c)(1), the terms of any fixed or floating rate payments, including the terms and contingencies of any such payments; (4) for a security-based swap that is not a clearing transaction, the title and date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract; (5) to the extent not provided pursuant to Rule 901(c) or other provisions of Rule 901(d), any additional elements included in the agreement between the counterparties that are necessary for a person to determine the market value of the transaction; (6) if applicable, and to the extent not provided pursuant to Rule 901(c), the name of the registered clearing agency to which the security-based swap will be submitted for clearing; (7) if the direct counterparties do not intend to submit the security-based swap to clearing, whether they have invoked the exception in Section 3C(g) of the Exchange Act; (8) to the extent not provided pursuant to other provisions of Rule 901(d), if the direct counterparties do not submit the security-based swap to clearing, a description of the settlement terms, including whether the security-based swap is cash-settled or physically settled, and the method for determining the settlement value; (9) the platform ID, if applicable; and (10) if the security-based swap arises from the allocation, termination, novation, or assignment of one or more existing security-based swaps, the transaction ID of the allocated, terminated, assigned, or novated security-based swap(s), except in the case of a clearing transaction that results from the netting or compression of other clearing transactions.

3. Discussion of Final Rule 901(d) and Response to Comments

a. Rule 901(d)(1)—Counterparty IDs

In the Regulation SBSR Proposing Release, the Commission expressed the view that a registered SDR ''must have a systematic means to identify and track'' all persons involved in the security-based swap transactions reported to that registered SDR.[132] The Commission intended to accomplish this, in part, through proposed Rule 901(d)(1)(i), which would have required the reporting party to report the participant ID of each counterparty to a registered SDR.[133] As proposed in Rule 900, ''participant ID'' would have been defined as ''the UIC assigned to a participant'' [134] and ''participant'' would have encompassed: (1) A U.S. person that is a counterparty to a security-based swap that is required to be reported to a registered SDR; or (2) a non-U.S. person that is a counterparty to a security-based swap that is (i) required to be reported to a registered SDR; and (ii) executed in the United States or through any means of interstate commerce, or cleared through a clearing agency that has its principal place of business in the United States.

Re-proposed Rule 901(d)(1)(i) would have required the reporting side to report the participant ID of each counterparty to a security-based swap. Re-proposed Rule 900(s) would have defined ''participant'' as ''a person that is a counterparty to a security-based swap that meets the criteria of § 242.908(b).'' Under re-proposed Rule 900(s), the following types of person would have met the criteria of Rule 908(b): (1) U.S. persons; (2) security-based swap dealers and major security-based swap participants; and (3) counterparties to a transaction ''conducted within the United States.'' [135]

The Commission received no comments on re-proposed Rule 901(d)(1)(i), but has determined to adopt, as final Rule 901(d)(1), a modified rule that will, in the Commission's estimation, better accomplish the objective of ensuring that a registered SDR can identify each counterparty to a security-based swap. As re-proposed, the reporting side would have been required to report the participant ID of its counterparty only if the counterparty met the definition of ''participant,'' which would have been limited by Rule 908(b). Under the re-proposed definition of ''participant,'' some counterparties to security-based swaps would not have become participants of the registered SDRs that receive reports of those security-based swaps under Rule 901(a). For example, if a U.S. person security-based swap dealer entered into a security-based swap with a non-U.S. person private fund in a transaction that is not conducted within the United States, the security-based swap dealer would have been a participant of the registered SDR to which the security-based swap is reported pursuant to Rule 901(a), but the private fund would not. In this circumstance, Rule 901(d)(1)(i), as re-proposed, would not have provided a mechanism for the reporting of the private fund's identity to the registered SDR; because the private fund would not have been a participant of that registered SDR it would not have received a ''participant ID.''

The Commission believes that it is necessary and appropriate for a registered SDR to obtain identifying information for all counterparties to security-based swaps that are subject to Regulation SBSR. Without this information being reported to a registered SDR, the Commission's ability to oversee the security-based swap market could be impaired because the Commission might not be able to determine the identity of each counterparty to a security-based swap reported to a registered SDR pursuant to Regulation SBSR.

Final Rule 901(d)(1) addresses this concern by requiring the reporting side to report ''the counterparty ID or the execution agent ID of each counterparty, as applicable.'' The Commission is adopting, as Rule 900(j), the term ''counterparty ID,'' which means ''the UIC assigned to a counterparty to a

[131] Rule 901(j), which specifies the timeframe for reporting of the information enumerated in Rules 901(c) and 901(d), is discussed in Section VII(B)(1) *infra*.

[132] 75 FR 75217.

[133] *See infra* Section X (discussing use of LEIs).

[134] The definition of ''participant ID'' was re-proposed, without change, in re-proposed Rule 900(s). The UIC is the unique identification code assigned to a person, unit of a person, product, or transaction. *See* Rule 900(qq). As discussed more fully in Section IV, *infra*, final Rule 907(a)(5) requires a registered SDR to establish and maintain policies and procedures for assigning UICs in a manner consistent with adopted Rule 903.

[135] *See* Cross-Border Proposing Release, 78 FR 31065 (discussing re-proposed Rule 908(b)).

security-based swap.'' [136] A ''counterparty'' is a person that is a direct or indirect counterparty of a security-based swap.[137] A ''direct counterparty'' is a person that is a primary obligor on a security-based swap,[138] and an ''indirect counterparty'' is a guarantor of a direct counterparty's performance of any obligation under a security-based swap such that the direct counterparty on the other side can exercise rights of recourse against the indirect counterparty in connection with the security-based swap; for these purposes a direct counterparty has rights of recourse against a guarantor on the other side if the direct counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the guarantor in connection with the security-based swap.[139] Thus, the definition of ''counterparty ID'' encompasses UICs that identify all direct and indirect counterparties to a security-based swap, even if a particular counterparty is not a participant of a registered SDR.[140]

The Commission believes final Rule 901(d)(1) will accomplish the Commission's objective of obtaining identifying information for all counterparties to a security-based swap and improve regulatory oversight and surveillance of the security-based swap market. The counterparty ID will allow registered SDRs, the Commission, and other relevant authorities to track activity by a particular market participant and facilitate the aggregation and monitoring of that market participant's security-based swap positions.

The Commission also is adopting a requirement in Rule 901(d)(1)(i) for the reporting side to report the ''execution agent ID'' as applicable.[141] This situation could arise if the identity of a counterparty is not known at the time of execution.[142] In this circumstance, the reporting side would report the execution agent ID because it would not know the counterparty ID.

Regulation SBSR requires reporting of the UIC of each counterparty to a security-based swap.[143] One commenter stated that ''each series or portfolio within each trust should be given its own LEI/UCI number to address possible confusion between series or portfolios within the same trust. Each portfolio is distinct with its own separate assets and liabilities.'' [144] The Commission agrees with this commenter and notes that Rule 901(d)(1) requires the reporting of the UIC for each counterparty to a security-based swap, whether not the counterparty is a legal person.[145] If a counterparty is an entity other than a legal person, such as a series or portfolio within a trust, or an account, Rule 901(d)(1) requires the reporting of the UIC that identifies that counterparty.

Finally, the Commission notes that although it is not adopting a definition of ''participant ID,'' the concept of a ''participant'' is still utilized in Regulation SBSR. Rule 900(u), as adopted, defines ''participant,'' with respect to a registered SDR, as ''a counterparty, that meets the criteria of § 242.908(b), of a security-based swap that is reported to that registered security-based swap data repository to satisfy an obligation under § 242.901(a).'' [146] The adopted definition makes clear that a person becomes a participant of a particular registered SDR only if the person meets the criteria of Rule 908(b) *and* is a counterparty to a security-based swap that is reported to that registered SDR on a mandatory basis. A counterparty would not become a participant of *all* registered SDRs as a result of being a counterparty to a security-based swap that is subject to Regulation SBSR and reported to a particular registered SDR as required by Rule 901(a). The adopted definition also clarifies that a counterparty would not become a participant of a registered SDR as a result of any non-mandatory report [147] submitted to that registered SDR.[148] Similarly, a counterparty that meets the criteria of Rule 908(b) would not become a participant of any registered SDR if the security-based swap is reported pursuant to a substituted compliance determination under Rule 908(c), because such a security-based swap would not be reported to a registered SDR pursuant to Rule 901(a).

The final definition of ''participant'' is less comprehensive than the re-proposed definition because Rule 908(b), as adopted, is narrower than Rule 908(b), as re-proposed. As discussed in Section XV(D), *infra,* final Rule 908(b) includes U.S. persons, registered security-based swap dealers, and registered major security-based

[136] The Commission is not adopting the re-proposed definition of ''participant ID'' as this term is not used in Regulation SBSR, as adopted.

[137] *See* Rule 900(i).

[138] *See* Rule 900(k).

[139] *See* Rule 900(p). Re-proposed Rule 900(o) would have defined ''indirect counterparty'' to mean ''a guarantor of a direct counterparty's performance of any obligation under a security-based swap.'' The Commission is adopting, consistent with the approach it took in the cross-border context, a modified definition of ''indirect counterparty'' to clarify the type of guarantor relationship that would cause a person to become an indirect counterparty for purposes of Regulation SBSR. *See* Securities Exchange Act Release No.72472 (June 25, 2014), 79 FR 47278, 47316–17 (August 12, 2014) (''Cross-Border Adopting Release''). Final Rule 900(p) defines ''indirect counterparty'' to mean a guarantor of a direct counterparty's performance of any obligation under a security-based swap such that the direct counterparty on the other side can exercise rights of recourse against the indirect counterparty in connection with the security-based swap; for these purposes, a direct counterparty has rights of recourse against a guarantor on the other side if the direct counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the guarantor in connection with the security-based swap. Thus, under final Rule 900(p), a person becomes an indirect counterparty to a security-based swap if the guarantee offered by the person permits a direct counterparty on the other side of the transaction to exercise rights of recourse against the person in connection with the security-based swap. The Commission believes that, if a recourse guarantee exists, it is reasonable to assume that the other side of the transaction would look both to the direct counterparty and its guarantor(s) for performance on the security-based swap. If the direct counterparty fails to fulfill its payment obligations on the security-based swap, its guarantor would be obligated to make the required payments. As noted in the Cross-Border Adopting Release, such rights may arise in a variety of contexts. The meaning of the terms ''guarantee,'' ''recourse,'' and any related terms used in Regulation SBSR is the same as the meaning of those terms in the Cross-Border Adopting Release and the rules adopted therein.

[140] The process for obtaining UICs, including counterparty IDs, is described in Section X, *infra.*

[141] *See infra* Section II(C)(3)(b)(i) (discussing execution agent ID).

[142] The Commission believes the reporting side may not know the counterparty ID of the other side if, for example, the security-based swap will be allocated after execution. Section VIII describes how Regulation SBSR applies to security-based swaps involving allocation.

[143] *See* Rule 901(d)(1); Rule 907(a)(5) (requiring a registered SDR to have written policies and procedures for assigning UICs in a manner consistent with Rule 903).

[144] Institutional Investors Letter at 6.

[145] Consequently, the word ''person,'' as used in this release, includes any counterparty to a security-based swap, including a counterparty that is not a legal person. *Cf.* Cross-Border Adopting Release, 79 FR 47312 (providing that an account, whether discretionary or not, of a U.S. person also is a U.S. person—even though accounts generally are not considered separate legal persons—and noting that this prong of the ''U.S. person'' definition focuses on the party that actually bears the risk arising from a security-based swap transaction).

[146] Re-proposed Rule 900(s) would have defined ''participant'' as ''a person that is a counterparty to a security-based swap that meets the criteria of § 242.908(b).''

[147] *See infra* Section VI(D)(1) (discussing non-mandatory reports).

[148] Assume, for example, that Fund X is a U.S. person and engages in a single uncleared security-based swap with a registered security-based swap dealer. Further assume that the registered security-based swap dealer, who has the duty to report the transaction under the reporting hierarchy, elects to submit the required transaction report to SDR P, and also submits a non-mandatory report of the transaction to SDR Q. Fund X is now a participant of SDR P but not of SDR Q. Under Rule 900(u), Fund X would not become a participant of SDR Q unless and until it enters into a future security-based swap that is reported on a mandatory basis to SDR Q.

swap participants. The Commission is not at this time taking action on the prong of re-proposed Rule 908(b) that would have caused a person to become a participant solely by being a counterparty to a security-based swap that is a transaction conducted within the United States. As a result, fewer non-U.S. persons are likely to ''meet the criteria of Rule 908(b),'' as adopted, because a non-U.S. person that is a counterparty of a security-based swap would meet the criteria of final Rule 908(b) only if that counterparty is a registered security-based swap dealer or a registered major security-based swap participant. Thus, only a U.S. person, a registered security-based swap dealer, or a registered major security-based swap participant could be a ''participant'' under Regulation SBSR.

b. Rule 901(d)(2)—Additional UICs

Rule 901(d)(1)(ii), as re-proposed, would have required reporting of, as applicable, the broker ID, desk ID, and trader ID of the direct counterparty on the reporting side. The Commission preliminarily believed that the reporting of this information would help to promote effective oversight, enforcement, and surveillance of the security-based swap market by the Commission and other relevant authorities.[149] The Commission noted, for example, that this information would allow regulators to track activity by a particular participant, a particular desk, or a particular trader. In addition, relevant authorities would have greater ability to observe patterns and connections in trading activity, or examine whether a trader had engaged in questionable activity across different security-based swap products. Such identifiers also would facilitate aggregation and monitoring of the positions of security-based swap counterparties, which could be of significant benefit for systemic risk management.[150]

Adopted Rule 901(d)(2) modifies re-proposed Rule 901(d)(1)(ii) in certain respects. First, final Rule 901(d)(2) replaces the defined term ''desk ID'' with the defined term ''trading desk ID.'' Second, final Rule 901(d)(2) now includes a requirement to report the branch ID and the execution agent ID of the direct counterparty on the reporting side, in addition to the broker ID, trading desk ID, and trader ID. In conjunction with this requirement, final Rule 900 includes the new defined terms ''branch ID'' and ''execution agent ID.'' Third, final Rule 900 includes a revised definition of ''trader ID.'' Thus, final Rule 901(d)(2) requires reporting of, ''[a]s applicable, the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID of the direct counterparty on the reporting side.'' [151]

i. Branch ID and Execution Agent ID

Rule 901(d)(2), as adopted, requires the reporting of, as applicable, the branch ID and execution agent ID of the direct counterpart on the reporting side, in addition to the broker ID, trader ID, and trading desk ID of the direct counterparty on the reporting side. The ''branch ID'' is the ''UIC assigned to a branch or other unincorporated office of a participant.'' [152] The Commission did not include a requirement to report the branch ID in Rule 901(d), as proposed or as re-proposed. However, the Commission now believes that it is appropriate to include in Regulation SBSR a new concept of the branch ID and require reporting of the branch ID, when a transaction is conducted through a branch, as part of Rule 901(d)(2), as adopted. Reporting of the branch ID, where applicable, will help identify the appropriate sub-unit within a large organization that executed a security-based swap (if a transaction were in fact conducted through that sub-unit). This information also will facilitate the aggregation and monitoring of security-based swap transactions by branch, at the level of the registered SDR and potentially within the firm itself.

Final Rule 901(d)(2) also includes another UIC, the ''execution agent ID,'' that was not included in the proposal or re-proposal. Rule 900(m), as adopted, provides that the execution agent ID is the ''UIC assigned to any person other than a broker or trader that facilitates the execution of a security-based swap on behalf of a direct counterparty.'' The Commission initially proposed to require reporting of the broker ID in order to obtain a record of an agent that facilitates a transaction, if there is such an agent. The Commission now recognizes, however, that entities other than registered brokers could act as agents in a security-based swap transaction. For example, an asset manager could be acting as an agent on behalf of a fund counterparty but likely would not be a broker-dealer. The definition of ''execution agent ID'' is designed to encompass the entities in addition to brokers that may act as agents for security-based swap counterparties. The broker ID,[153] which also must be reported under final Rule 901(d)(2), will identify a registered broker, if any, that intermediates a security-based swap transaction between two direct counterparties and itself is not a counterparty to the transaction.

The Commission believes that obtaining information about a broker or execution agent, if any, involved in the transaction will provide regulators with a more complete understanding of the transaction and could provide useful information for market surveillance purposes. The Commission notes that some security-based swap transactions may involve multiple agents. For example, an asset manager could use a broker to facilitate the execution of a security-based swap on behalf of one or more of the funds that it advises. In that case, final Rule 901(d) would require reporting of the counterparty ID of the direct counterparty (the fund), the execution agent ID (for the asset manager), and the broker ID (of the broker that intermediated the transaction).

ii. Revised Defined Terms in Rule 901(d)(2)

Rule 901(d)(1)(ii), as re-proposed, would have required the reporting of, among other things, the desk ID of the direct counterparty on the reporting side. Rule 900(i), as re-proposed, would have defined ''desk ID'' as the UIC assigned to the trading desk of a participant or of a broker of a participant. Rule 900, as re-proposed, did not include a definition of ''desk.'' Final Rule 901(d)(2) requires the reporting of the ''trading desk ID,'' rather than the ''desk ID.'' Accordingly, the defined term ''desk ID'' is being replaced in Rule 900 with the defined term ''trading desk ID,'' which Rule 900(*ll*) defines as ''the UIC assigned to the trading desk of a participant.'' Unlike re-proposed Rule 900, which provided no definition of the term ''desk,'' final Rule 900(kk) provides a definition of the term ''trading desk.'' Specifically, final Rule 900(kk) defines ''trading desk'' to mean, ''with respect to a counterparty, the smallest discrete unit of organization of the participant

[149] *See* Regulation SBSR Proposing Release, 75 FR 75217.

[150] *See id.*

[151] As discussed in greater detail in Section XIII(A), *infra,* Rule 906(a), as adopted, requires reporting to a registered SDR of the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID, as applicable, of a direct counterparty to a security-based swap that is not the reporting side. Thus, Rules 901(d)(2) and 906(a) together require reporting, as applicable, of the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID of each direct counterparty to a security-based swap.

[152] *See* Rule 900(d).

[153] ''Broker ID'' is defined as ''the UIC assigned to a person acting as a broker for a participant.'' *See* Rule 900(e).

that purchases or sells financial instruments for the account of the participant or an affiliate thereof.'' The Commission believes that adding a definition of ''trading desk'' will help to clarify the rule by describing the type of structure within an enterprise that must receive a trading desk ID. The ''trading desk ID'' concept is designed to identify, within a large organization, the smallest discrete unit that initiated a security-based swap transaction. Requiring the reporting of the trading desk ID will assist regulators in monitoring the activities and exposures of market participants. The trading desk ID could, among other things, facilitate investigations of suspected manipulative or abusive trading practices.[154]

Final Rule 901(d)(2) also requires reporting of, if applicable, the trader ID of the direct counterparty on the reporting side. Re-proposed Rule 900(gg) would have defined ''trader ID'' as ''the UIC assigned to a natural person who executes security-based swaps.'' This definition would encompass a direct counterparty that executed a security-based swap, as well as a trader acting as agent that executes a security-based swap on behalf of a direct counterparty. The Commission did not intend for the definition of ''trader ID'' to include both direct counterparties (whose counterparty IDs must be provided pursuant to Rule 901(d)(1)) and traders acting in an agency capacity that execute security-based swaps on behalf of a direct counterparty. To narrow the definition of ''trader ID'' so that it includes only traders that execute security-based swaps on behalf of direct counterparties, final Rule 900(jj) defines ''trader ID'' as ''the UIC assigned to a natural person who executes one or more security-based swaps on behalf of a direct counterparty.'' The direct counterparty would be the person, account, or fund that is the direct counterparty to the security-based swap that employs the trader.

iii. Response to Comments

One commenter supported the proposed requirement for reporting broker ID, desk ID, and trader ID, stating that these UICs would ''give regulators a capability to aggregate position and trade data in multiple ways including by individual trader to spot concentration risk and insider trading.'' [155] A second commenter argued that desk structures change relatively frequently and personnel often rotate or transfer to other firms; therefore, the effort to maintain trader ID and desk ID information in a registered SDR could exceed its usefulness.[156] The commenter also indicated that information regarding the desk ID and trader ID would be available from a firm's audit trail.[157]

The Commission questions whether consistent and robust information about a firm's desk and trader activity is available from firms' audit trails. Even if it were, the Commission believes that reporting of the trader ID and the trading desk ID—as well as the branch ID, broker ID, and execution agent ID—will help to assure that information concerning the persons involved in the intermediation and execution of a security-based swap is readily available to the Commission and other relevant authorities. This information could assist in monitoring and overseeing the security-based swap market and facilitate investigations of suspected manipulative or abusive trading practices.

Two other commenters raised issues with requiring reporting of broker, trader, and trading desk IDs.[158] One of these commenters believed that reporting these UICs would require ''great cost and effort'' from firms, including the costs associated with establishing and maintaining UICs in the absence of a global standard.[159] The commenter also noted that not all of these identifiers are required to be reported in other jurisdictions.[160] In a joint comment letter with another trade association, this commenter also stated that, because these UICs are not currently reported by any participants in the OTC derivatives markets, ''[t]he industry will need to develop standards and appropriate methodology to effectively report this information.'' [161] This comment expressed concern that the proposed requirement ''will create significant 'noise' as a result of booking restructuring events (due to either technical or desk reorganization considerations). We therefore recommend that such information be either excluded, or that participants report the Desk ID and Trader ID associated with the actual trade or lifecycle events, but not those resulting from internal reorganization events.'' [162]

The Commission recognizes that, currently, UICs for branches, execution agents, trading desks, and individual traders are generally not in use. While the Commission agrees with the commenters that there could be a certain degree of cost and effort associated with establishing and maintaining UICs, the Commission believes that such costs have already been taken into account when determining the costs of Regulation SBSR.[163] The costs of developing such UICs are included in the costs for Rule 901 (detailing the data elements that must be reported) and Rule 907 (detailing the requirement that SDRs develop policies and procedures for the reporting of the required data elements).

The Commission confirms that these UICs must be reported pursuant to Rule 901(d)(2) only in connection with the original transaction.[164]

[154] The trading desk ID also might allow relevant authorities to determine whether a particular trading desk is engaging in activity that could disrupt the security-based swap markets. For example, in early 2012, a trading desk of JPMorgan Chase and Company known as the Chief Investment Office executed transactions in synthetic credit derivatives that declined in value by at least $6.2 billion later in the year. According to the report of the United States Senate Permanent Subcommittee on Investigations, these trades, which were unknown to the bank's regulators, were ''so large in size that they roiled world credit markets.'' Report of the United States Senate Permanent Subcommittee on Investigations, JPMorgan Chase Whale Trades: A Case History of Derivatives Risks and Abuses (March 15, 2013), available at *http://www.hsgac.senate.gov/subcommittees/investigations/hearings/chase-whale-trades-a-case-history-of-derivatives-risks-and-abuses* (last visited October 7, 2014). The existence of a trading desk ID could, in the future, facilitate the ability of relevant authorities to detect this type of trading activity.

[155] GS1 Letter at 39 (also stating that these elements ''would be most critical for performing trading oversight and compliance functions such as trading ahead analysis, assessing trader price collusion, analyzing audit trail data from multiple derivatives markets as well as underlying cash markets . . . Also, lack of unique, unambiguous and universal identification of broker, desks and traders was one of the significant deterrents to analyzing the May 6, 2010 flash crash''). Another commenter generally supported the information required to be reported pursuant to Rule 901(d). *See* Barnard I at 2.

[156] *See* DTCC II at 11.

[157] *See id.*

[158] *See* ISDA III at 2; ISDA IV at 8; ISDA/SIFMA at 11.

[159] ISDA III at 2; ISDA IV at 8.

[160] *See* ISDA IV at 8 (stating that ''[u]nder EMIR rules, broker ID is required, but not desk ID or trader ID. In Canada, only broker ID is required, but we note that reporting entities are struggling with the availability of an LEI to identify brokers that have not been subject to a mandate to obtain one''). *See also* ISDA III at 2.

[161] ISDA/SIFMA at 11.

[162] *Id. See also* ISDA IV at 8 (''We suggest that the Commission eliminate broker ID, desk ID and trader ID from the list of reportable secondary trade information. If the Commission wants to retain these fields we strongly believe a cost-benefit analysis should be conducted'').

[163] *See infra* Section XXII(C)(1) (providing the economic analysis of these requirements).

[164] Thus, a participant would not be required to ''re-report'' a transaction to the registered SDR if, for example, the trader who executed the transaction leaves the firm some time afterwards. However, the participant will be subject to the policies and procedures of the registered SDR for, among other things, assigning UICs in a manner consistent with Rule 903. *See infra* Section IV. Those policies and procedures could include a requirement for the participant to regularly notify the registered SDR

c. Rule 901(d)(3)—Payment Stream Information

Rule 901(d)(1)(iii), as proposed and re-proposed, would have required the reporting side to report the amount(s) and currenc(ies) of any up-front payment(s) and a description of the terms and contingencies of the payment streams of each direct counterparty to the other. The Commission stated that this requirement would include, for a credit default swap, an indication of the counterparty purchasing protection, the counterparty selling protection, and the terms and contingencies of their payments to each other; and, for other security-based swaps, an indication of which counterparty is long and which is short.[165] The Commission noted that this information could be useful to regulators in investigating suspicious trading activity.[166]

One commenter stated the view that proposed Rule 901(d)(1)(iii) was duplicative of proposed Rule 901(d)(1)(v), which would require reporting of the data elements necessary to determine the market value of a transaction.[167] The commenter stated, further, that proposed Rule 901(d)(1)(iii) was unclear about the required form of the description of the terms and contingencies of the payment streams, and requested further clarification of this proposed requirement.[168]

The Commission agrees with the commenter's concerns regarding the need to clarify the information required to be reported under these provisions of Rule 901. Accordingly, the Commission is revising adopted Rule 901(d)(3) to require the reporting, *to the extent not provided pursuant to Rule 901(c)(1),* of the terms of any fixed or floating rate payments, or otherwise customized or non-standardized payment streams, including the frequency and contingencies of any such payments.[169] As discussed above, adopted Rule 901(c)(1)(iv) requires the reporting side to report the terms of any *standardized* fixed or floating rate payments, and the frequency of any such payments.[170] To the extent that a security-based swap includes fixed or floating rate payments that do not occur on a regular schedule or are otherwise customized or non-standardized, final Rule 901(d)(3) requires the reporting of the terms of those payments, including the frequency and contingencies of the payments. The Commission believes that the changes to final Rule 901(d)(3) make clear that Rule 901(d)(3) requires reporting of customized or non-standardized payment streams, in contrast to the standardized payment streams required to be reported pursuant to Rule 901(c)(1)(iv). The terms required to be reported could include, for example, the frequency of any resets of the interest rates of the payment streams. The terms also could include, for a credit default swap, an indication of the counterparty purchasing protection and the counterparty selling protection, and, for other security-based swaps, an indication of which counterparty is long and which counterparty is short. The Commission believes that information concerning the non-standard payment streams of a security-based swap could be useful to the Commission or other relevant authorities in assessing the nature and extent of counterparty obligations and risk exposures. The Commission believes that the changes made to Rule 901(d)(3) will help clarify the information required to be reported under the rule and will eliminate any redundancy between the information required to be reported under Rules 901(c)(1)(iv) and 901(d)(3).

In addition, as discussed more fully below, the Commission is revising re-proposed Rule 901(d)(1)(v), which is renumbered as final Rule 901(d)(5), to indicate that Rule 901(d)(5) requires the reporting of additional data elements necessary to determine the market value of a transaction *only to the extent that the information has not been reported pursuant to Rule 901(c) or other provisions of Rule 901(d).* The Commission believes that these changes address the concern that Rule 901(d)(i)(iii) was duplicative of Rule 901(d)(1)(v).

d. Rule 901(d)(4)—Titles and Dates of Agreements

Rule 901(d)(1)(iv), as proposed, would have required reporting of the title of any master agreement, or any other agreement governing the transaction (including the title of any document governing the satisfaction of margin obligations), incorporated by reference and the date of any such agreement. Rule 901(d)(1)(v), as proposed, would have required reporting of the data elements necessary for a person to determine the market value of the transaction. The Commission noted that proposed Rule 901(d)(1)(v) would require, for a security-based swap that is not cleared, information related to the provision of collateral, such as the title and date of the relevant collateral agreement. The Commission preliminarily believed that these requirements, together with other information required to be reported under Rule 901(d), would facilitate regulatory oversight of counterparties by providing information concerning counterparty obligations.[171] The Commission re-proposed Rules 901(d)(1)(iv) and 901(d)(1)(v) without revision in the Cross-Border Proposing Release.

In proposing Rules 901(d)(1)(iv) and 901(d)(1)(v), the Commission balanced the burdens associated with reporting entire agreements against the benefits of having information about these agreements, and proposed to require reporting only of the title and date of such master agreements and any other agreement governing the transaction. Similarly, the Commission indicated that proposed Rule 901(d)(1)(v) would require the reporting of the title and date of any collateral agreements governing the transaction.[172]

One commenter disagreed with the Commission's proposed approach. This commenter expressed the view that Regulation SBSR should be more explicit in requiring reports of information concerning collateral and margin for use by regulators because this information would be important for risk assessment and other purposes.[173]

The Commission agrees that it is important for regulatory authorities to have access to information concerning the collateral and margin associated with security-based swap transactions. The Commission also is mindful,

about changes in persons or business units requiring a UIC.

[165] *See* Regulation SBSR Proposing Release, 75 FR 75218, note 62.

[166] *See id.*

[167] *See* DTCC II at 10.

[168] *See* DTCC II at 10; DTCC V at 12.

[169] As discussed above, the requirement to report the amount(s) and currenc(ies) of any up-front payments now appears in Rule 901(c)(3), rather than in Rule 901(d). Rule 901(c)(3), as adopted, requires reporting of the price of a security-based swap, including the currency in which the price is expressed and the amount(s) and currenc(ies) of any up-front payments.

[170] If information concerning the terms and frequency of any regular fixed or floating rate payments is included in the product ID for the security-based swap, the reporting side is required to report only the product ID, and would not be required to separately report the terms and frequency of any regular fixed or floating rate payments in addition to the product ID. *See* Rule 901(c)(1); Section III(B)(2)(b)(ii), *supra.*

[171] *See* Regulation SBSR Proposing Release, 75 FR 75218.

[172] *See id.* at 75218, note 63.

[173] *See* Better Markets I at 7–8 (arguing that, to facilitate oversight, security-based swap counterparties should be required to report the core data elements of their collateral arrangements, including, at a minimum: (1) The parties to the agreement; (2) the thresholds for forbearance of posted collateral applicable to each party; (3) the triggers applicable to each party that would require immediate funding (termination of forbearance); and (4) the methodology for measuring counterparty credit risk); Better Markets III at 4–5.

however, that requiring the reporting of detailed information concerning the master agreement and other documents governing security-based swaps could impose significant burdens on market participants. In addition, the Commission notes that one commenter on proposed Regulation SBSR stated that it would not be possible, in all cases, to identify the collateral associated with a particular security-based swap transaction because collateral is calculated, managed, and processed at the portfolio level rather than at the level of individual transactions.[174]

In light of these considerations, the Commission believes that, for security-based swaps that are not clearing transactions, requiring reporting of the title and date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract—but not the agreements themselves or detailed information concerning the agreements—will facilitate regulatory oversight of the security-based swap market by providing regulators with a more complete understanding of a security-based swap counterparty's obligations while not imposing significant burdens on market participants. The Commission anticipates that, if a situation arose where the Commission or another relevant authority needed to consult information about a transaction contained in one of the related agreements, the Commission could request the agreement from one of the security-based swap counterparties. Knowing the title and date of the agreement will assist relevant authorities in identifying the agreement and thereby expedite the process of obtaining the necessary information.

One commenter argued that the ''level of change'' necessary to incorporate the titles and dates of master agreements into individual trade messages was excessive and recommended that the trade level reference continue to follow the current process of referencing the lowest level governing document, which would permit the identification of all of the other relevant documents.[175] Another commenter questioned the value of requiring reporting of the title and date of party level agreements.[176] This commenter stated that, because other jurisdictions do not require reporting of the ''title and date of a Credit Support Agreement or other similar document (''CSA'') governing the collateral arrangement between the parties . . . global trade repositories do not currently have fields to support separate reporting of data pertaining to the CSA from those which define the master agreement. Equally challenging is firms' ability to report data pertaining to the CSA as the terms of these agreements are not readily reportable in electronic format nor could this be easily or accurately achieved.'' [177] Noting that other global regulators have limited their trade reporting requirements to the relevant date and type of the master agreement, the commenter believed that the information required to be reported should be limited to the identification of party level master agreements that govern all of the derivatives transactions between the parties, and should not include master confirmations or other documentation that is used to facilitate confirmation of the security-based swap.[178]

The Commission understands that reporting the titles and dates of agreements for individual security-based swap transactions may require some modification of current practices. However, the Commission believes that it is important for regulators to know such titles and dates so that the Commission and other relevant authorities would know where to obtain further information about the obligations and exposures of security-based swap counterparties, as necessary. The Commission believes that requiring reporting of the titles and dates of master agreements and other agreements governing a transaction—but not the agreements themselves or detailed information concerning the agreements—would provide regulators with access to necessary information without creating an unduly burdensome reporting obligation. Therefore, the Commission is adopting Rule 901(d)(1)(iv) substantially as proposed and re-proposed, while renumbering it final Rule 901(d)(4). With respect to the commenter's concern regarding the difficulty of reporting the terms of the documentation governing a security-based swap, the Commission emphasizes that final Rule 901(d)(4) requires reporting only of the titles and dates of the documents specified in Rule 901(d)(4), but not the terms of these agreements.

The commenter also requested additional clarity regarding the proposed requirement generally.[179] As discussed above, Rule 901(d)(1)(iv), as proposed and re-proposed, would have required reporting of ''the title of any master agreement, or any other agreement governing the transaction (including the title of any document governing the satisfaction of margin obligations), incorporated by reference and the date of any such agreement.'' The proposed rule also would have required reporting of the title and date of any collateral agreements governing the transaction.[180] Although the rule, as proposed and re-proposed, would have required reporting of the title and date of any master agreement, margin agreement, collateral agreement, and any other document governing the transaction that is incorporated by reference, the Commission agrees that it would be useful to state more precisely the information required to be reported and to clarify the scope of the rule. Rule 901(d)(4), as adopted, requires reporting of, ''[f]or a security-based swap that is not a clearing transaction, the title and date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract.'' The new language makes clear that Rule 901(d)(4) applies only to security-based swaps that are not clearing transactions (*i.e.,* security-based swaps that do not have a registered clearing agency as a direct counterparty). Any such agreements relating to a clearing transaction would exist by operation of the rules of the registered clearing agency, and therefore do not need to be reported pursuant to Regulation SBSR because the Commission could obtain information from the registered clearing agency as necessary.

e. Rule 901(d)(5)—Other Data Elements

Rule 901(d)(1)(v), as re-proposed, would have required reporting of the data elements necessary for a person to determine the market value of a transaction. The Commission is adopting Rule 901(d)(1)(v) substantially

[174] *See* ISDA/SIFMA I at 14–15. Specifically, the commenter stated that the calculation of exposure collateral ''is performed at a netted portfolio level and cannot be broken down to the transaction level—it is simply not possible to identify the specific exposure collateral or the 'exposure' associated with any particular transaction.'' *See id.* at 14. The commenter noted, further, that the independent amount, an optional additional amount of collateral that two counterparties may negotiate, ''may be specified at transaction level, at portfolio level, at some intermediate level (a combination of product type, currency and maturity, for instance), and possible a hybrid of all three. Therefore it may or may not be possible to identify the [independent amount] associated with a particular transaction, but as a general matter this association cannot be reliably made.'' *See id.* at 15.

[175] *See* DTCC II at 11.

[176] *See* ISDA IV at 8.

[177] *Id.*

[178] *See id.*

[179] *See* DTCC V at 12.

[180] *See* Regulation SBSR Proposing Release, 75 FR 75218, note 63.

as re-proposed, but renumbering it as Rule 901(d)(5) and making certain technical and clarifying changes in response to comments.

As discussed above, re-proposed Rule 901(d)(1)(iii) would have required reporting of the amount(s) and currenc(ies) of any up-front payments and the terms and contingencies of the payment streams of each direct counterparty to the other. One commenter believed that re-proposed Rule 901(d)(1)(iii) was duplicative of re-proposed Rule 901(d)(1)(v),[181] and asked the Commission to provide additional clarity on what re-proposed Rule 901(d)(1)(v) requires.[182] To address these comments, the Commission is revising adopted Rule 901(d)(5) to require the reporting, *to the extent not required pursuant to Rule 901(c) or other provisions of Rule 901(d),* of any additional data elements included in the agreement between the counterparties that are necessary for a person to determine the market value of the transaction.

Another commenter expressed concern that the requirements of re-proposed Rule 901(d)(1)(v) were vague, ''leaving reporting parties and trade repositories with the task of establishing the reportable data with potentially different result.'' [183] This commenter recommended that Commission revise the rule to clarify the requirement to report ''(i) the mark-to-market value and currency code and (ii) the date and time of the valuation in Coordinated Universal Time . . .'' [184] Further, because information necessary to determine the market value of a transaction ''is determined as part of end of day processes,'' the commenter requested that the timeframe for reporting data pertaining to market value be based on the end of the day on which the relevant data was determined.[185]

In response to these concerns, the Commission emphasizes that neither Regulation SBSR, as proposed and re-proposed, nor Regulation SBSR, as adopted, requires the reporting of the market value of a security-based swap (although the negotiated price of the actual transaction is required to be reported), either on a one-time or ongoing basis.[186] As noted above, final Rule 901(d)(5) requires reporting, to the extent not required pursuant to Rule 901(c) or other provisions of Rule 901(d), of any additional data elements included in the agreement between the counterparties that are necessary to determine the market value of the transaction. This refers to all of the contractual terms and conditions of a security-based swap that a party would need to perform its own calculation of the market value of the security-based swap using its own market data. Although the reporting side must include, as part of the initial transaction report, the information necessary to determine the market value of the transaction, Regulation SBSR does not require the reporting side to take the additional step of calculating and reporting the market value of the transaction, nor does it require the reporting side to provide any market data that would be needed to calculate the market value of the transaction.

Rule 901(d)(5) is designed to help to ensure that all of the material terms of the agreement between the counterparties that is necessary to determine the market value of a security-based swap are available to the Commission and other relevant authorities.[187] The Commission continues to believe that this requirement will facilitate regulatory oversight by giving relevant authorities the information necessary to value an entity's security-based swap positions and calculate the exposure resulting from those positions. However, the final language of Rule 901(d)(5) is designed to eliminate any overlap with other provisions of Rule 901(c) or 901(d). For example, if a security-based swap has a product ID, the Commission presumes that all information necessary to identify the security-based swap and determine the market value of the transaction could be derived from the product ID (or the identification information behind that particular product ID). Therefore, it would not be necessary to report any additional information pursuant to Rule 901(d)(5) for a security-based swap for which a product ID is reported.

In addition, the Commission is further clarifying the rule by making a technical change to indicate that final Rule 901(d)(5) requires the reporting only of data elements ''included in the agreement between the counterparties.'' The Commission believes that the rule as proposed and re-proposed—which did not include this phrase—could have been interpreted to require the reporting of information external to the agreement between the counterparties that could have helped determine the market value of the security-based swap (*e.g.,* the levels of supply and demand in the market for the security-based swap). The Commission intended, however, to require reporting only of information included in the agreement between the counterparties, not of general market information. Accordingly, final Rule 901(d)(5) requires the reporting only of data elements ''included in the agreement between the counterparties'' that are necessary for a person to determine the market value of the transaction.

Finally, one commenter believed that proposed Rule 901(d)(1)(v) should require reporting only of the full terms of a security-based swap as laid out in the trade confirmation.[188] Although the Commission agrees that the full terms of a trade confirmation could, in some cases, provide the data elements included in the agreement between the counterparties that are necessary to determine the market value of a transaction, the Commission notes that the information required to be reported pursuant Rule 901(d)(5) would not necessarily be limited to information included in the trade confirmation. Not all market participants observe the same conventions for confirming their trades. The Commission understands that confirmations for some types of trades are significantly more standardized than others. Some trades may have critical terms included in other documentation, such as master confirmation agreements or credit support annexes. Moreover, confirmation practices in the future may differ from current confirmation practices. The Commission believes, therefore, that restricting information reported in accordance with Rule 901(d)(5) to the information included in the confirmation would not provide the Commission and other relevant authorities with sufficient information regarding the market value of a security-based swap.

f. Rule 901(d)(6)—Submission to Clearing

Rule 901(d)(1)(vi), as re-proposed, would have required reporting of the following data element: ''If the security-based swap will be cleared, the name of the clearing agency.'' This information would allow the Commission to verify, if necessary, that a security-based swap was cleared, and to identify the clearing agency that cleared the transaction. The

[181] *See* DTCC II at 10.

[182] *See* DTCC V at 12.

[183] ISDA IV at 9.

[184] *Id.*

[185] *See id.*

[186] In contrast, the CFTC's swap data reporting rules require reporting parties to report the market value of swap transactions to a CFTC-registered swap data repository on a daily basis. *See* 17 CFR 45.4(a)(2).

[187] This could include—by way of example and not of limitation—information about interest rate features, commodities, or currencies that are part of the security-based swap contract.

[188] *See* DTCC II at 10.

Commission received no comments on this provision and is adopting it substantially as re-proposed, with minor clarifying changes and renumbered as Rule 901(d)(6). Rule 901(d)(6), as adopted, requires reporting of the following: ''If applicable, and to the extent not provided pursuant to paragraph (c) of this section, the name of the clearing agency to which the security-based swap will be submitted for clearing.''

For some security-based swaps, the name of the clearing agency that clears the security-based swap could be inherent in the product ID. Rule 901(d)(6), as adopted, clarifies that the name of the clearing agency to which the security-based swap will be submitted for clearing need not be reported if that information is inherent in the product ID. In addition, the new language regarding whether the security-based swap will be *submitted* for clearing reflects the possibility that a clearing agency could reject the security-based swap for clearing after it has been submitted. The Commission believes that it would be useful to know the name of the clearing agency to which the transaction is submitted, even if the clearing agency rejects the transaction.

g. Rule 901(d)(7)—Indication of Use of End-User Exception

Rule 901(d)(1)(vii), as re-proposed, would have required reporting of whether a party to the transaction invoked the so-called ''end user exception'' from clearing, which is contemplated in Section 3C(g) of the Exchange Act.[189] Section 3C(g)(6) of the Exchange Act [190] provides for the Commission to request information from persons that invoke the exception. The Commission preliminarily believed that requiring reporting of whether the exception was invoked in the case of a particular security-based swap would assist the Commission in monitoring use of the exception.[191]

One commenter argued that the Commission should not use the trade reporting mechanism ''to police the end-user exception.'' [192] The commenter expressed concern with an end user having to certify eligibility with each transaction and stated that ''it is illogical that filings by swap dealers should determine the eligibility of the end user.'' [193] The Commission acknowledges the commenter's concerns but believes that they are misplaced. Re-proposed Rule 901(d)(1)(vii) would not require reporting of any information as to the end user's eligibility to invoke the exception for a specific transaction; instead, it would require reporting only of the fact of the exception being invoked. The Commission could then obtain information from a registered SDR regarding instances of the exception being invoked and could determine, as necessary, whether to further evaluate whether the exception had been invoked properly. The Commission does not believe that it is necessary or appropriate to require information about the end user's eligibility to invoke the exception to be reported under Rule 901(d). Therefore, the Commission has determined to adopt Rule 901(d)(1)(vii) as re-proposed, but is renumbering it as Rule 901(d)(7).

h. Rule 901(d)(8)—Description of Settlement Terms

Rule 901(d)(1)(viii), as re-proposed, would have required, for a security-based swap that is not cleared, a description of the settlement terms, including whether the security-based swap is cash-settled or physically settled, and the method for determining the settlement value. In the Regulation SBSR Proposing Release, the Commission stated its preliminary belief that this information would assist relevant authorities in monitoring the exposures and obligations of security-based swap market participants.[194] One commenter expressed the view that the settlement terms could be derived from other data fields and thus recommended deletion of this data element, or in the alternative, requested additional clarity on what would be required pursuant to this provision.[195]

Re-proposed Rule 901(d)(1)(viii) is being adopted substantially as re-proposed but renumbered as final Rule 901(d)(8) and now includes certain revisions that respond to the commenter and clarify the operation of the rule. Rule 901(d)(8), as adopted, requires: ''[t]o the extent not provide pursuant to other provisions of this paragraph (d), if the direct counterparties do not submit the security-based swap to clearing, a description of the settlement terms, including whether the security-based swap is cash-settled or physically settled, and the method for determining the settlement value.'' The Commission believes that the final rule makes clear that there is no requirement to report information concerning the settlement terms of an uncleared security-based swap if the information was reported pursuant to another provision of Rule 901(d). Similarly, there is no requirement to report the settlement terms pursuant to Rule 901(d)(8) if the settlement terms are inherent in the product ID. Final Rule 901(d)(8) is designed to facilitate regulatory oversight by providing the Commission and other relevant authorities with information necessary to understand the exposures of security-based swap counterparties.

i. Rule 901(d)(9)—Platform ID

Rule 901(d)(1)(ix), as re-proposed, would have required reporting of the venue where a security-based swap was executed. This would include, if applicable, an indication that a security-based swap was executed bilaterally in the OTC market.[196] This information could be useful for a variety of purposes, including studying the development of security-based swap execution facilities (''SB SEFs'') or conducting more detailed surveillance of particular security-based swap transactions. In the latter case, the Commission or another relevant authority would find it helpful to know the execution venue, from which it could obtain additional information as appropriate.

One commenter, in discussing the entity that should assign transaction IDs, suggested that linking a trade to a particular platform potentially could result in the unintentional disclosure of the identities of the counterparties.[197] The Commission notes that information concerning the venue where a security-based swap was executed, like all secondary trade information reported under Rule 901(d), is not required to be, and thus may not be, publicly disseminated. Because the platform ID may not be publicly disseminated, there is no potential for it to unintentionally

[189] 15 U.S.C. 78c–3(g). Section 3C(g)(1) of the Exchange Act provides that the general clearing mandate set forth in Section 3C(a)(1) of the Exchange Act will not apply to a security-based swap if one of the counterparties to the security-based swap: (1) Is not a financial entity; (2) is using security-based swaps to hedge or mitigate commercial risk; and (3) notifies the Commission, in a manner set forth by the Commission, how it generally meets if financial obligations associated with entering into non-cleared security-based swaps. The application of Section 3C(g)(1) is solely at the discretion of the security-based swap counterparty that satisfies these conditions. *See* Securities Exchange Act Release No. 63556 (December 15, 2010), 75 FR 79992 (December 21, 2010).

[190] 15 U.S.C. 78c–3(g)(6).

[191] *See* Regulation SBSR Proposing Release, 75 FR 75218.

[192] Cravath Letter at 3.

[193] *Id.* at 4.

[194] *See* 75 FR 75218.

[195] *See* DTCC V at 12.

[196] *See* Regulation SBSR Proposing Release, 75 FR 75218.

[197] *See* DTCC II at 15–16.

identify the counterparties to the transaction.

The Commission continues to believe that information identifying the venue where a security-based swap was executed, whether on a trading platform or in the OTC market, is necessary information for relevant authorities to conduct surveillance in the security-based swap market and understand developments in the security-based swap market generally. Therefore, the Commission is adopting the rule substantially as re-proposed and renumbering it as final Rule 901(d)(9).

One commenter asked the Commission to clarify that re-proposed Rule 901(d)(1)(ix) would require reporting only of execution platforms required to register with the Commission or the CFTC.[198] The Commission believes that final Rule 901(d)(9) largely accomplishes this result. Specifically, the Commission has revised Rule 901(d)(9) to require reporting, if applicable, of the ''platform ID,'' rather than the ''execution venue'' more broadly. To implement this requirement, the Commission also is adopting a definition of ''platform.'' Final Rule 900(v) defines a ''platform'' as ''a national securities exchange or a security-based swap execution facility that is registered or exempt from registration.'' [199] Rule 900(w) defines ''platform ID'' as the UIC assigned to the platform on which a security-based swap is executed. The platform ID, like other UICs, must be assigned as provided in Rule 903. The Commission believes that this approach makes clear that other entities that may be involved in executing transactions, such as inter-dealer brokers, are not considered platforms for purposes of this reporting requirement.[200]

j. Rule 901(d)(10)—Transaction ID of Any Related Transaction

Regulation SBSR, as proposed and re-proposed, was designed to obtain complete and accurate reporting of information regarding a security-based swap from its execution through its termination or expiration. In the Regulation SBSR Proposing Release, the Commission noted that maintaining an accurate record of the terms of a security-based swap would require reporting of life cycle event information to a registered SDR.[201] The term ''life cycle event'' includes terminations, novations, and assignments of existing security-based swaps.[202] As discussed in greater detail in Sections V(C)(5) and VIII(A), *infra,* a new security-based swap may arise following the allocation, termination, novation, or assignment of an existing security-based swap, and that the reporting side for the new security-based swap must report the transaction to a registered SDR.[203] The Commission believes that it should be able to link any new security-based swaps that arise from the termination, novation, or assignment of an existing security-based swap to the original transaction. For example, when a single security-based swap is executed as a bunched order and then allocated among multiple counterparties, the Commission and other relevant authorities should be able to link the allocations to the executed bunched order.[204] The ability to link a security-based swap that arises from an allocation, termination, novation, or assignment back to the original security-based swap(s) will help to assure that the Commission and relevant authorities have an accurate and current representation of counterparty exposures.

To facilitate the Commission's ability to map a resulting security-based swap back to the original transaction—particularly if the original transaction and the resulting transaction(s) are reported to different registered SDRs—the Commission is adopting Rule 901(d)(10), which requires the reporting side for a security-based swap that arises from an allocation, termination, novation, or assignment of one or more existing security-based swaps, to report ''the transaction ID of the allocated, terminated, assigned, or novated security-based swap(s), except in the case of a clearing transaction that results from the netting or compression of other clearing transactions.'' [205] The Commission does not believe that it is necessary to require reporting of the transaction ID for clearing transactions that result from other clearing transactions because clearing transactions occur solely within the registered clearing agency and are used by the registered clearing agency to manage the positions of clearing members and, possibly their clients. Thus, it would not be necessary for regulatory authorities to have the ability to link together clearing transactions that result from other clearing transactions.

k. Information That Is Not Required by Rule 901(d)

One commenter, responding to a question in the Regulation SBSR Proposing Release,[206] stated that the Commission should not require reporting of the purpose of a security-based swap because it could reveal proprietary information, and because the parties to a security-based swap often will have several reasons for executing the transaction.[207] The Commission agrees that counterparties could have multiple reasons for entering into a security-based swap, and that requiring reporting of a particular reason could be impractical. Furthermore, different sides to the same transactions would likely have different reasons for entering into it. The

[198] *See* ISDA IV at 9.

[199] The Commission believes that transactions occurring on a registered SB SEF as well as an exempt SB SEF should be reported to a registered SDR. Certain entities that currently meet the definition of ''security-based swap execution facility'' are not yet registered with the Commission and will not have a mechanism for registering until the Commission adopts final rules governing the registration and core principles of SB SEFs. These entities currently operate pursuant to an exemption from certain otherwise applicable provisions of the Exchange Act. *See* Securities Exchange Act Release No. 34–64678 (June 15, 2011), 76 FR 36287, 36292–93 (June 22, 2011) (Temporary Exemptions and Other Temporary Relief, Together With Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps). In addition, the Commission has raised the possibility of granting exemptions to certain foreign security-based swap markets that otherwise would meet the definition of ''security-based swap execution facility.'' *See* Cross-Border Proposing Release, 78 FR 31056 (''The Commission preliminarily believes that it may be appropriate to consider an exemption as an alternative approach to SB SEF registration depending on the nature or scope of the foreign security-based swap market's activities in, or the nature or scope of the contacts the foreign security-based swap market has with, the United States''). The adopted definition of ''platform'' requires such entities to be identified in SDR transaction reports and thus will enable the Commission and other relevant authorities to observe transactions that occur on such exempt SB SEFs.

[200] Consistent with Rule 901(d)(9), a registered SDR could create a single identifier for transactions that are not executed on a national securities exchange or a SB SEF that is registered or exempt from registration.

[201] *See* 75 FR 75220. The Commission re-affirmed the importance of life cycle event reporting for security-based swaps in the Cross-Border Proposing Release. *See* 75 FR 31068.

[202] *See infra* Section XXI(A) (discussing the definition of ''life cycle events'').

[203] Certain terminations, such as the termination of an alpha upon acceptance for clearing, result in the creation of new security-based swaps (*e.g.,* the beta and gamma). Similarly, security-based swaps that are terminated during netting or compression exercises result in the creation of new security-based swaps. Regardless of the circumstances, if a security-based swap arises from the termination of an existing security-based swap, the reporting side for the new security-based swap must report the transaction to a registered SDR as required by Rule 901(a).

[204] *See infra* Section VIII (explaining the application of Regulation SBSR to security-based swaps involving allocations).

[205] *See infra* Section V(B) (discussing the definition of ''clearing transaction'').

[206] *See* 75 FR 75218 (question 39).

[207] *See* ISDA/SIFMA I at 12. *See also* Barnard I at 2 (stating that the commenter was ''not convinced'' that the Commission should require reporting of the purpose of a security-based swap transaction).

Commission notes, further, that it did not propose to require reporting of the purpose of the security-based swap and Rule 901, as adopted, does not include a requirement to report this information.

Two commenters recommended that the Commission require reporting of valuation data on an ongoing basis.[208] The Commission emphasizes that it did not propose to require the reporting of valuation data in either the Regulation SBSR Proposing Release or the Cross-Border Proposing Release, and that it is not adopting such a requirement at this time.[209] However, the Commission will continue to assess the reporting and public dissemination regime under Regulation SBSR and could determine to propose additional requirements, such as the reporting of valuations, as necessary or appropriate. In addition, the Commission notes that the data elements required under Rules 901(c) and 901(d) are designed to allow the public, the Commission, other relevant authorities, or a data analytics firm engaged by a relevant authority, to calculate the market value of a security-based swap at the time of execution of the trade.[210]

C. Reporting of Historical Security-Based Swaps

1. Statutory Basis and Proposed Rule

Section 3C(e)(1) of the Exchange Act [211] requires the Commission to adopt rules providing for the reporting to a registered SDR or to the Commission of security-based swaps entered into before the date of enactment of Section 3C (*i.e.,* July 21, 2010). By its terms, this provision is not limited to security-based swaps that were still open as of the date of enactment of the Dodd-Frank Act. In the Regulation SBSR Proposing Release, the Commission took the preliminary view that an attempt to collect many years' worth of transaction-level security-based swap data (including data on terminated or expired security-based swaps) would not enhance the goal of price discovery, nor would it be particularly useful to relevant authorities or market participants in implementing a forward-looking security-based swap reporting and dissemination regime.[212] The Commission also took the preliminary view that collecting, reporting, and processing all such data would involve substantial costs to market participants with little potential benefit. Accordingly, the Commission proposed to limit the reporting of security-based swaps entered into prior to the date of enactment to only those security-based swaps that had not expired as of the date of enactment of the Dodd-Frank Act (''pre-enactment security-based swaps'').

In addition, Section 3C(e)(2) of the Exchange Act [213] requires the Commission to adopt rules that provide for the reporting of security-based swaps entered into on or after the date of enactment of Section 3C (''transitional security-based swaps'').[214]

The Commission proposed Rule 901(i) to implement both of these statutory requirements. Rule 901(i), as proposed, would have required a reporting party to report all of the information required by Rules 901(c) and 901(d) for any pre-enactment security-based swap or transitional security-based swap (collectively, ''historical security-based swaps''), to the extent such information was available. Thus, Rule 901(i), as proposed and re-proposed, would have required the reporting only of security-based swaps that were open on or executed after the date of enactment (July 21, 2010). The Commission further proposed that historical security-based swaps would not be subject to public dissemination. In the Cross-Border Proposing Release, the Commission re-proposed Rule 901(i) in its entirety with only one technical revision, to replace the term ''reporting party'' with ''reporting side.''

2. Final Rule and Discussion of Comments Received

As adopted, Rule 901(i) states: ''With respect to any pre-enactment security-based swap or transitional security-based swap in a particular asset class, and to the extent that information about such transaction is available, the reporting side shall report all of the information required by [Rules 901(c) and 901(d)] to a registered security-based swap data repository that accepts security-based swaps in that asset class and indicate whether the security-based swap was open as of the date of such report.'' In adopting Rule 901(i), the Commission is making minor changes to the rule as re-proposed in the Cross-Border Proposing Release. The Commission has added the clause ''in a particular asset class'' following ''transitional security-based swap'' and the clause ''to a registered security-based swap data repository that accepts security-based swaps in that asset class.'' The security-based swap market is segregated into different asset classes, and an SDR might choose to collect and maintain data for only a single asset class. These new clauses clarify that a reporting side is not obligated to report historical security-based swaps in a particular asset class to a registered SDR that does not accept security-based swaps in that asset class. A reporting side's duty to report a historical security-based swap in a particular asset class arises only when there exists a registered SDR that accepts security-based swaps in that asset class.

The Commission also is adopting the definition of ''pre-enactment security-based swap'' as proposed and re-proposed.[215] Further, the Commission is adopting the definition of ''transitional security-based swap'' substantially as proposed and re-proposed, with one clarifying change and a technical revision to eliminate the obsolete term ''effective reporting date.'' [216] Rule

[208] *See* DTCC II at 10; Markit I at 3. A third commenter, discussing the Commission's proposed rules governing recordkeeping and reporting requirements for security-based swap dealers, major security-based swap participants, and broker-dealers (Securities Exchange Act Release No. 34–71958 (April 17, 2014), 79 FR 25194 (May 2, 2014)), urged the Commission to provide guidance regarding the methods these entities should use to produce valuation information). *See* Levin Letter at 3–4. A fourth commenter asked the Commission to confirm that there is no requirement to report valuation data on a daily basis, provided that there has been no change in the data. *See* ISDA IV at 11.

[209] *See also* Section II(B)(3)(e), *supra.*

[210] *See* Rule 901(d)(5) (requiring reporting of any additional data elements included in the agreement between the counterparties, to the extent not already provided under another provision of Rule 901(c) or 901(d), that are necessary for a person to determine the market value of the transaction); Regulation SBSR Proposing Release, 75 FR 75218 (''the reporting of data elements necessary to calculate the market value of a transaction would allow regulators to value an entity's [security-based swap] positions and calculate the exposure resulting from those provisions'').

[211] 15 U.S.C. 78c–3(e)(1).

[212] *See* 75 FR 75223–24.

[213] 15 U.S.C. 78c 3(e)(2).

[214] *See* Regulation SBSR Proposing Release, 75 FR 75224. *See also* re-proposed Rule 900(kk) (defining ''transitional security-based swap'' to mean ''any security-based swap executed on or after July 21, 2010, and before the effective reporting date'').

[215] *See* Rule 900(y).

[216] The term ''effective reporting date'' was used in the compliance schedule set out in re-proposed Rule 910, which the Commission is not adopting. The ''effective reporting date,'' would have been defined to mean, with respect to a registered [SDR], the date six months after the registration date. The ''registration date'' would have been defined to mean, with respect to a registered SDR, ''the date on which the Commission registers the security-based swap data repository, or, if the Commission registers the security-based swap data repository before the effective date of §§ 242.900 through 242.911, the effective date of §§ 242.900 through 242.911.'' *See* re-proposed Rules 900(*l*) and 900(bb), respectively. The Commission is making a conforming change to delete the defined terms ''effective reporting date'' and ''registration date'' from final Rule 900. As noted in Section I(F) above, the Commission is proposing a new compliance schedule for Rules 901, 902, 903, 904, 905, 906, and

900(nn), as adopted, defines ''transitional security-based swap'' to mean ''a security-based swap executed on or after July 21, 2010, and before the first date on which trade-by-trade reporting of security-based swaps in that asset class to a registered security-based swap data repository is required pursuant to §§ 242.900 through 242.909.'' Thus, only those security-based swaps that were open as of the date of enactment (July 21, 2010) or opened thereafter must be reported. The Commission continues to believe that the costs of reporting security-based swaps that terminated or expired before July 21, 2010, would not justify any potential benefits, particularly given the difficulty of assembling records concerning these transactions after many years. One commenter specifically agreed with the Commission's proposal to limit reporting of security-based swaps entered into prior to the date of enactment only to those that had not expired as of that date.[217]

However, this commenter also expressed concern that a blanket requirement to report all pre-enactment security-based swaps ''risks double-counting and presenting a distorted view of certain markets.'' [218] In particular, the commenter indicated that compression exercises and tri-party novations raised concerns regarding the potential for double-counting. The Commission shares the commenter's concern that double-counting could create a distorted view of the security-based swap market. Therefore, the Commission is adding new language at the end of the Rule 901(i) which provides that the reporting side of a pre-enactment or transitional security-based swap must ''indicate whether the security-based swap was open as of the date of such report.'' This information is necessary to allow a registered SDR to calculate a participant's open positions established before the time trade-by-trade reporting becomes mandatory for a particular asset class.

The commenter also stated that ''inter-affiliate security-based swaps should not be subject to reporting.'' [219] The Commission disagrees with this suggestion. As described in Section IX, *infra,* the Commission believes generally that inter-affiliate security-based swaps should be subject to regulatory reporting and public dissemination. The Commission thus believes that pre-enactment inter-affiliate security-based swaps also should be subject to regulatory reporting, assuming that such security-based swaps were opened after the date of enactment or still open as of the date of enactment. The Commission notes, however, that no information reported pursuant to Rule 901(i) will be publicly disseminated.

Having access to information regarding historical security-based swaps will help the Commission and other relevant authorities continue to develop a baseline understanding of positions and risk in the security-based swap market, starting on the date of enactment of the Dodd-Frank Act, which contemplates the regime for regulatory reporting of all security-based swaps. These transaction reports will provide a benchmark against which to assess the development of the security-based swap market over time, and help the Commission to prepare reports that it is required to provide to Congress.

One commenter, while generally supporting the Commission's proposal to require reporting of historical security-based swaps to a registered SDR, argued that only open contracts should be reported.[220] The Commission partially agrees with this comment and thus, as noted above, is requiring reporting of only pre-enactment security-based swaps that were open as of the date of enactment. However, the Commission believes that all security-based swaps entered into on or after the date of enactment should be reported—even if they expired or were terminated before trade-by-trade reporting becomes mandatory—and that the reporting side should indicate whether the security-based swap was open as of the date of such report. While reporting of terminated or expired transitional security-based swaps is not necessary for the calculation of market participants' open positions, this information will assist the Commission and other relevant authorities to create, for surveillance purposes, at least a partial audit trail [221] of transactions executed after the date of enactment and, more generally, to analyze market developments since the date of enactment.

This commenter also argued that security-based swaps ''only [in] their current state should need to be reported, without additional information like execution time.'' [222] A second commenter expressed concern that the reporting requirements for historical security-based swaps could require parties to modify existing trades that occurred in a heretofore unregulated market in order to comply with Rule 901(i).[223] A third commenter expressed concern that ''[t]he submission of non-electronic transaction confirmations [for pre-enactment security-based swaps] will be extremely burdensome for reporting entities,'' [224] and recommended instead that the Commission ''permit the reporting in a common electronic format of the principal electronic terms'' of each such pre-enactment security-based swap.[225]

For several reasons, the Commission believes that Rule 901(i) strikes a reasonable balance between the burdens placed on security-based swap counterparties and the policy goal of enabling the Commission and other relevant authorities to develop a baseline understanding of counterparties' security-based swap positions. First, the Commission notes that Rule 901(i) requires reporting of the data elements set forth in Rules 901(c) and 901(d) *only to the extent such information is available.* The Commission does not expect, nor is it requiring, reporting sides to create or re-create data related to historical security-based swaps. Thus, if the time of execution of a historical security-based swap was not recorded by the counterparties, it is not required to be reported under Rule 901(i). Similarly, Rule 901(i) does not require counterparties to modify existing transactions in any way to ensure that all data fields are complete. By limiting the reporting requirement to only that information that is available, the Commission is acknowledging that, for historical security-based swaps, certain information contemplated by Rules 901(c) and 901(d) may not be available. The Commission generally believes that the benefits of requiring security-based swap counterparties to reconstruct the missing data elements—including, for example, the time of execution—potentially several years after the time of execution—would not justify the costs.

908 of Regulation SBSR in the Regulation SBSR Proposed Amendments Release.

[217] *See* ISDA I at 2, note 1.

[218] *Id.* at 4.

[219] ISDA I at 5.

[220] *See* DTCC II at 17.

[221] The Commission notes that Rule 901(i) by its terms requires the reporting of historical security-based swaps only ''to the extent such information is available.'' Thus, if information about terminated or expired transitional security-based swaps no longer exists, it would not be required to be reported under Rule 901(i).

[222] DTCC II at 17. *See also* ISDA I at 5 (requesting that the Commission clarify that market participants are not required to provide trade execution time information for pre-enactment security-based swap transactions).

[223] *See* Roundtable Letter at 11 (stating that ''any effort to alter the terms or documentation of existing swaps would be resource intensive with potentially significant negative consequences'').

[224] Deutsche Bank Letter at 2.

[225] *Id.* at 3.

The Commission agrees with the commenter who argued that providing large volumes of non-electronic confirmations to registered SDRs is not desirable, and that the Commission instead should require reporting in a ''common electronic format.'' [226] As discussed in Section IV, *infra,* Rules 907(a)(1) and 907(a)(2) require registered SDRs to establish and maintain policies and procedures that enumerate the specific data elements and the acceptable data formats for transaction reporting, including of historical security-based swaps. The Commission expects that registered SDRs and their participants will consult regarding the most efficient and cost effective ways to report the transaction information required by Rule 901(i). Furthermore, to the extent that information regarding a historical security-based swap already has been reported to a person that will register with the Commission as an SDR—or to a person that itself will not seek registration as an SDR but will transfer the historical security-based swap information to an affiliate that registers as an SDR—Rule 901(i) would be satisfied, and would not require resubmission of that information to the registered SDR.[227]

Finally, the Commission notes an issue relating to the reporting of the counterparty ID of historical security-based swaps. As commenters have discussed,[228] certain foreign jurisdictions have privacy laws or blocking statutes that may prohibit the disclosure of the identity of a counterparty to a financial transaction, such as a security-based swap transaction. Thus, the reporting side of a cross-border security-based swap could face a dilemma: Comply with Regulation SBSR and report the identity of the counterparty and thereby violate the foreign law, or comply with the foreign law by withholding the identity of the counterparty and thereby violate Regulation SBSR. As discussed in Section XVI(B), *infra,* the Commission will consider requests for exemptions from the requirement under Rule 901(i) to report the identity of a counterparty with respect to historical security-based swaps.

[226] Deutsche Bank Letter at 2–3.

[227] One commenter, DTCC, noted that the Trade Information Warehouse could provide an affiliate that will seek registration as an SDR with information related to security-based swaps that were previously reported to the Trade Information Warehouse. *See* DTCC II at 17.

[228] *See infra* note 956.

III. Where To Report Data

A. All Reports Must Be Submitted to a Registered SDR

Section 13A(a)(1) of the Exchange Act [229] provides that ''[e]ach security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization shall be reported to—(A) a registered security-based swap data repository described in Section 13(n); or (B) in the case in which there is no security-based swap data repository that would accept the security-based swap, to the Commission.'' Section 13(m)(1)(G) of the Exchange Act [230] provides that ''[e]ach security-based swap (whether cleared or uncleared) shall be reported to a registered security-based swap data repository.'' Rule 901(b) implements these statutory requirements.

Rule 901(b), as re-proposed, would have required reporting of the security-based swap transaction information required under Regulation SBSR ''to a registered security-based swap data repository or, if there is no registered security-based swap data repository that would accept the information, to the Commission.'' In addition, Rule 13n–5(b)(1)(ii) under the Exchange Act, adopted as part of the SDR Adopting Release, requires an SDR that accepts reports for any security-based swap in a particular asset class to accept reports for all security-based swaps in that asset class that are reported to the SDR in accordance with certain SDR policies and procedures. In view of this requirement under Rule 13n–5(b)(1)(ii) and the statutory requirement in Section 13(m)(1)(G) that all security-based swaps, whether cleared or uncleared, must be reported to a registered SDR, the Commission does not anticipate that any security-based swaps will be reported directly to the Commission.

Some commenters noted the potential advantages of designating a single registered SDR for each asset class.[231] Another commenter, however, believed that a diverse range of options for reporting security-based swap data would benefit the market and market participants.[232] These comments concerning the development of multiple registered SDRs are discussed in Section XIX, *infra.* No commenters opposed Rule 901(b), and the Commission is adopting Rule 901(b) with technical modifications to clarify the rule.[233]

[229] 15 U.S.C. 78m–1(a)(1).

[230] 15 U.S.C. 78m(m)(1)(G).

[231] *See* DTCC II at 14–15 (noting the potential for fragmentation of data and overstatement of net open interest and net exposure if security-based swaps in the same asset class are reported to multiple registered SDRs); ISDA/SIFMA I at note 12 (stating that the designation of a single registered SDR per asset would provide valuable efficiencies because there would be no redundancy of platforms or need for additional data aggregation, which would reduce the risk of errors associated with transmitting, aggregating, and analyzing data from multiple sources).

B. Duties of Registered SDR Upon Receiving Transaction Reports

1. Rule 901(f)—Time Stamps

Rule 901(f), as re-proposed, provided that ''[a] registered security-based swap data repository shall time stamp, to the second, its receipt of any information submitted to it pursuant to paragraph (c), (d), (e), or (i) of this section.'' The Commission preliminarily believed that this requirement would help regulators to evaluate certain trading activity.[234] For example, a reporting side's pattern of submitting late transaction reports could be an indicator of weaknesses in the reporting side's internal compliance processes. Accordingly, the Commission preliminarily believed that the ability to compare the time of execution with the time of receipt of the report by the registered SDR could be an important component of surveillance activity conducted by relevant authorities.

One commenter, noting that proposed Rule 901(f) would require time-stamping to the nearest second, argued that ''[t]ime-stamping increment should be as small as technologically practicable, but in any event no longer than fractions of milliseconds.'' [235] The commenter expressed the view that, especially in markets with multiple SB SEFs or where algorithmic trading occurs, ''the sequencing of trade data for transparency and price discovery, as well as surveillance and enforcement purposes, will require much smaller increments of time-stamping.'' [236] The Commission notes, however, that Rule 901(f) is designed to allow the Commission to learn when a transaction has been reported to a registered SDR, not when the transaction was executed. The interim phase of applying Regulation SBSR allows transactions to

[232] *See* MFA I at 6.

[233] Rule 901(b), as re-proposed, would have required reporting of the security-based swap transaction information required under Regulation SBSR ''to a registered security-based swap data repository or, if there is no registered security-based swap data repository that would accept the information, to the Commission.'' Final Rule 901(b) provides: ''If there is no registered security-based swap data repository that will accept the report required by § 242.901(a), the person required to make such report shall instead provide the required information to the Commission.''

[234] *See* Regulation SBSR Proposing Release, 75 FR 75221.

[235] Better Markets I at 9.

[236] *Id.*

be reported up to 24 hours after time of execution. The Commission believes that no purpose would be served by knowing the moment of reporting to the subsecond. Instead, the Commission believes that this comment is germane instead to the reporting of time of execution. Therefore, the Commission has considered this comment in connection with Rule 901(c)(2) rather than with Rule 901(f).[237]

The Commission continues to believe that requiring a registered SDR to timestamp, to the second, its receipt of any information pursuant to paragraphs (c), (d), (e), or (i) of Rule 901 is appropriate, and is adopting Rule 901(f) as re-proposed. Rule 901(f) will allow the Commission to compare the time of execution against the time of receipt by the registered SDR to ascertain if a transaction report has been submitted late.

2. Rule 901(g)—Transaction IDs

Rule 901(g), as proposed and re-proposed, would have provided that ''[a] registered security-based swap data repository shall assign a transaction ID to each security-based swap.'' The transaction ID was defined in both the proposal and re-proposal as ''the unique identification code assigned by a registered security-based swap data repository to a specific security-based swap.'' The Commission preliminarily believed that a unique transaction ID would allow registered SDRs, regulators, and counterparties to more easily track a security-based swap over its duration and would facilitate the reporting of life cycle events and the correction of errors in previously reported security-based swap information.[238] The transaction ID of the original security-based swap would allow for the linking of the original report to a report of a life cycle event. Similarly, the transaction ID would be required to be included on an error report to identify the transaction to which the error report pertained.

In proposing Rule 901(g), the Commission preliminarily believed that, because each transaction is unique, it would not be necessary or appropriate to look to an internationally recognized standards setting body for assigning such identifiers.[239] Instead, proposed Rule 901(g) would have required a registered SDR to use its own methodology for assigning transaction IDs.[240]

Two commenters generally supported use of the transaction ID.[241] One commenter stated that transaction IDs would allow for a complete audit trail, permit the observation of concentrations of trading and risk exposure at the transaction level, and facilitate more timely analysis of market events.[242] The second commenter agreed that a transaction ID would be essential for reporting life cycle event and secondary trade information, as well as corrections to reported information.[243]

Commenters expressed mixed views regarding the entity that should assign the transaction ID. One commenter stated that a platform should assign the transaction ID to assure that the identifier is assigned at the earliest point in the life of a transaction.[244] A second commenter suggested that registered SDRs should assign transaction IDs,[245] or have the flexibility to accept transaction IDs already generated by the reporting side or to assign transaction IDs when requested to do so.[246] A third commenter expressed concern that registered SDRs would assign transaction IDs in a non-standard manner, which could hinder regulators' ability to gather transaction data across registered SDRs to reconstruct an audit trail.[247] A fourth commenter, a trade association, recommended that security-based swaps be identified by a Unique Trade Identifier (''UTI'') created either by the reporting side or by a platform (including an execution venue or an affirmation or middleware or electronic confirmation platform) on behalf of the parties.[248] This commenter noted that it has worked with market participants to develop a standard for creating and exchanging a single unique transaction identifier suitable for global reporting.[249]

After careful consideration, the Commission has determined to adopt Rule 901(g) with modifications to respond to concerns raised by the commenters. Final Rule 901(g) provides that a registered SDR ''shall assign a transaction ID to each security-based swap, or establish or endorse a methodology for transaction IDs to be assigned by third parties.'' The Commission is also making a conforming change to the definition of ''transaction ID.'' Final Rule 900(mm) defines ''transaction ID'' as ''the UIC assigned to a specific security-based swap transaction.'' As re-proposed, ''transaction ID'' would have been defined as ''the unique identification code assigned by a registered security-based swap data repository to a specific security-based swap.''[250] By eliminating the reference to a UIC ''assigned by a registered security-based swap data repository,'' the revised definition contemplates that a third party could assign a transaction ID under Regulation SBSR. However, because the Commission believes that the registered SDR is in the best position to promote the necessary uniformity for UICs that will be reported to it, the reporting side would be permitted to report a transaction ID generated by a third party only if the third party had employed a methodology for generating transaction IDs that had been established or endorsed by the registered SDR.

Rule 901(g), as adopted, provides flexibility by requiring a registered SDR either to assign a transaction ID itself or to establish or endorse a methodology for assigning transaction IDs. Thus, under adopted Rule 901(g), an SB SEF,

[237] *See supra* notes 76 and 77 and accompanying text.

[238] *See* Regulation SBSR Proposing Release, 75 FR 75221.

[239] *See id.*

[240] *See id.*

[241] *See* GS1 Proposal at 42; DTCC II at 15.

[242] *See* GS1 Proposal at 42 (also stating that transaction IDs would benefit internal compliance departments and self-regulatory organizations).

[243] *See* DTCC II at 15. Another commenter believed that proposed Regulation SBSR would require public dissemination of the transaction ID, and argued that the transaction ID should not be publicly disseminated, as it could compromise the identity of the counterparties to the security-based swap. The commenter suggested instead that an SDR could create a separate identifier solely for purposes of public dissemination. *See* ISDA IV at 17. Under Regulation SBSR, as adopted, the transaction ID is not a data element of security-based swap transaction that is required to be publicly disseminated. Thus, registered SDRs must identify transactions in public reports without using the transaction ID. *See infra* Section XII(C) (discussing requirement for registered SDRs to establish and maintain policies and procedures for disseminating life cycle events).

[244] *See* Tradeweb Letter at 5.

[245] DTCC II at 16 (arguing that this approach would ''eliminate any unintentional disclosure issues which stem from linking a trade to a specific SEF, potentially increasing the instances of unintended identification of the trade parties'').

[246] *See* DTCC V at 14.

[247] *See* GS1 Proposal at 42–43 (recommending an identification system that would allow counterparties, participants, SB SEFs, and registered SDRs to assign transaction IDs to specific transactions).

[248] *See* ISDA III at 2.

[249] *See id.* In a subsequent comment letter, this commenter indicated that it ''strongly believe[s] the party reporting the SBS should assign or provide the Transaction ID'' rather than a registered SDR. ISDA IV at 11 (stating that ''many SBS already have been reported to other global jurisdictions for which a . . . UTI (including a CFTC Unique Swap Identifier) has already been assigned by one of the parties or a central execution, affirmation or confirmation platform in accordance with industry standard practices for trade identifiers that have developed in the absence of a global regulatory standard. For the sake of efficiency and in consideration of global data aggregation, we recommend that the Commission allow a reporting party to use the UTI already established for a SBS for further reporting under SBSR and acknowledge that trades subject to reporting under SBSR may be assigned a trade identifier in accordance with existing industry UTI practices'').

[250] *See* re-proposed Rule 900(jj).

a counterparty, or another entity could assign a transaction ID, provided that it assigned the transaction ID using a methodology established or endorsed by the registered SDR. This approach will allow market participants to determine the most efficient and effective procedures for assigning transaction IDs and will accommodate the use of different processes that might be appropriate in different circumstances.[251] For example, an SB SEF might generate the transaction ID for a security-based swap executed on its facilities (provided the SB SEF does so using a methodology established or endorsed by the registered SDR[252]), while a registered SDR or security-based swap dealer counterparty might generate the transaction ID for a security-based swap that is not executed on an SB SEF.

IV. How To Report Data—Rules 901(h) and 907

A. Introduction

Designing a comprehensive system of transaction reporting and post-trade transparency for security-based swaps involves a constantly evolving market, thousands of participants, and potentially millions of transactions. The Commission does not believe that it is necessary or appropriate to specify by rule every detail of how this system should operate. On some matters, there may not be a single correct approach for carrying out the purposes of Title VII's requirements for regulatory reporting and public dissemination of security-based swap transactions.

The Commission believes that registered SDRs will play an important role in developing, operating, and improving the system for regulatory reporting and public dissemination of security-based swaps. Registered SDRs are at the center of the market infrastructure, as the Dodd-Frank Act requires all security-based swaps, whether cleared or uncleared, to be reported to them.[253] Accordingly, the Commission believes that some reasonable flexibility should be given to registered SDRs to carry out their functions—for example, to specify the formats in which counterparties must report transaction data to them, connectivity requirements, and other protocols for submitting information. Furthermore, the Commission anticipates that counterparties will make suggestions to registered SDRs for altering and improving their practices, or developing new policies and procedures to address new products or circumstances, consistent with the requirements set out in Regulation SBSR.

Accordingly, proposed Rule 907 would have required each registered SDR to establish and maintain written policies and procedures addressing various aspects of security-based swap transaction reporting. Proposed Rules 907(a)(1) and 907(a)(2) would have required a registered SDR to establish policies and procedures enumerating the specific data elements that must be reported, the acceptable data formats, connectivity requirements, and other protocols for submitting information; proposed Rule 907(a)(3) would have required a registered SDR to establish policies and procedures for reporting errors and correcting previously submitted information; proposed Rule 907(a)(4) would have required a registered SDR to establish policies and procedures for, among other things, reporting and publicly disseminating life cycle events and transactions that do not reflect the market; proposed Rule 907(a)(5) would have required a registered SDR to establish policies and procedures for assigning UICs; proposed Rule 907(a)(6) would have required a registered SDR to establish policies and procedures for obtaining ultimate parent and affiliate information from its participants; and proposed Rule 907(b) would have required a registered SDR to establish policies and procedures for calculating and publicizing block trade thresholds. The Commission also proposed to require registered SDRs to make their policies and procedures publicly available on their Web sites, and to update them at least annually.[254] Rule 901(h), as proposed and re-proposed, would have required reports to be made to a registered SDR ''in a format required by the registered security-based swap data repository, and in accordance with any applicable policies and procedures of the registered security-based swap data repository.''

Furthermore, because all security-based swaps must be reported to a registered SDR, registered SDRs are uniquely positioned to know of any instances of untimely, inaccurate, or incomplete reporting. Therefore, proposed Rule 907(e) would have required registered SDRs to have the capacity to provide the Commission with reports related to the timeliness, accuracy, and completeness of the data reported to them.

The Commission re-proposed Rule 907 as part of the Cross-Border Proposing Release with only minor conforming changes.[255] Rule 901(h) was re-proposed without revision.

B. Rules 907(a)(1), 907(a)(2), and 901(h)—Data Elements and Formats

The comments addressing Rule 907 were generally supportive of providing flexibility to registered SDRs to develop policies and procedures.[256] One commenter stated, for example, that overly prescriptive rules for how data is reported will almost certainly result in less reliable or redundant data flowing into an SDR when higher quality data is available. In this commenter's view, the Commission should not prescribe the exact means of reporting for SDRs to meet regulatory obligations, and SDRs should be afforded the flexibility to devise the most efficient, effective, and reliable methods of furnishing the Commission with the complete set of data necessary to fulfill regulatory obligations.[257] The Commission is adopting Rule 907 with some revisions noted below.

Final Rule 907(a)(1) requires a registered SDR to establish and maintain written policies and procedures that ''enumerate the specific data elements of a security-based swap that must be reported, which shall include, at a minimum, the data elements specified in [Rules 901(c) and 901(d)].'' The Commission revised Rule 907(a)(1) to make certain non-substantive changes and to move the requirement to establish policies and procedures for life cycle event reporting from final Rule 907(a)(1) to final Rule 907(a)(3).[258] Final

[251] This approach will allow a platform to assign the transaction ID in certain cases, as recommended by a commenter. *See* Tradeweb Letter at 5.

[252] Thus, the Commission only partially agrees with the commenter who believed that the registered SDR should assign transaction IDs, in order to ''eliminate any unintentional disclosure issues which stem from linking a trade to a specific SEF, potentially increasing the instances of unintended identification of the trade parties.'' DTCC II at 16. The Commission shares the commenter's concern that the transaction ID not result in the unintended identification of the counterparties. However, this would not require that the registered SDR itself issue the transaction ID in all cases; the registered SDR could allow submission of transaction IDs generated by third parties (such as SB SEFs or counterparties), provided that the registered SDR endorsed the methodology whereby third parties can generate transaction IDs. Furthermore, the Commission notes that the transaction ID is not a data element required by Rule 901(c) and thus it should not be publicly disseminated—so market observers should not be able to learn the transaction ID in any case.

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

[254] *See* proposed Rules 907(c) and 907(d).

[255] As initially proposed, Rule 907 used the term ''reporting party.'' As described in the Cross-Border Proposing Release, the term ''reporting party'' was replaced with ''reporting side'' in Rule 907 and throughout Regulation SBSR.

[256] *See* DTCC IV at 5. *See also* Barnard I at 3.

[257] *See* DTCC IV at 5.

[258] As initially proposed, Rule 907(a)(1) would have required policies and procedures that enumerate the specific data elements of a security-

Rule 907(a)(2) requires a registered SDR to establish and maintain written policies and procedures that ''specify one or more acceptable data formats (each of which must be an open-source structured data format that is widely used by participants), connectivity requirements, and other protocols for submitting information.'' The Commission is adopting Rule 907(a)(2) as re-proposed.

The Commission continues to believe that it is neither necessary nor appropriate to mandate a fixed schedule of data elements to be reported, or a single format or language for reporting such elements to a registered SDR. The Commission anticipates that industry standards for conveying information about security-based swap transactions will evolve over time, and the approach taken in Rule 907 is designed to allow Regulation SBSR's reporting requirements to evolve with them. The Commission further anticipates that security-based swap products with novel contract terms could be developed in the future. Establishing, by Commission rule, a fixed schedule of data elements risks becoming obsolete, as new data elements—as yet unspecified—could become necessary to reflect the material economic terms of such products. Final Rules 907(a)(1) and 907(a)(2) give registered SDRs the duty, but also the flexibility, to add, remove, or amend specific data elements or to adjust the required reporting protocols over time in a way that captures all of the material terms of a security-based swap while minimizing the reporting burden on its participants.[259] One commenter supported this approach, stating that ''[a] registered SDR should have the flexibility to specify acceptable formats, connectivity requirements and other protocols for submitting information.'' [260] The commenter added that ''[m]arket practice, including the structure of confirmation messages and detail of economic fields, evolve over time, and the SDR should have the capability to adopt and set new formats.'' [261] The Commission anticipates that feedback and ongoing input from participants will help registered SDRs to craft appropriate policies and procedures regarding data elements and reporting protocols.

The same commenter, in a subsequent comment letter, expressed concern that market participants could adopt different interpretations of the requirement to report payment stream information, which could result in inconsistent reporting to registered SDRs.[262] The Commission notes that final Rule 907(a)(1) requires a registered SDR to enumerate the specific data elements of a security-based swap that must be reported, and final 907(a)(2) requires a registered SDR, among other things, to specify acceptable data formats for submitting required information. Because Rules 907(a)(1) and 907(a)(2) provide a registered SDR with the authority to identify the specific data elements that must be reported with respect to the payment streams of a security-based swap and the format for reporting that information, the Commission does not believe that market participants will have flexibility to adopt inconsistent interpretations of the information required to be reported with respect to payment streams. Instead, persons with the duty to report transactions will be required to provide the payment stream information using the specific data elements and formats specified by the registered SDR.

One commenter argued that a uniform electronic reporting format is essential, and was concerned that Rules 901(h) and 907(a)(2) would permit multiple formats and connectivity requirements for the submission of data to a registered SDR.[263] The Commission considered the alternative of requiring a single reporting language or protocol for conveying information to registered SDRs, and three commenters encouraged the use of the FpML standard.[264] While FpML could be a standard deemed acceptable by a registered SDR pursuant to Rule 907(a)(2), the Commission does not believe that it is necessary or appropriate at this time for the Commission itself to require FpML as the only permissible standard by which reporting sides report transaction data to a registered SDR.[265] The Commission is concerned that adopting a regulatory requirement for a single standard for reporting security-based swap transaction information to registered SDRs could result in unforeseen adverse consequences, particularly if that standard proves incapable of being used to carry information about all of the material data elements of all security-based swaps, both those that exist now and those that might be created in the future. Thus, the Commission has adopted an approach that permits registered SDRs to select their own standards for how participants must report data to those SDRs. The Commission agrees with the commenter who recommended that all acceptable data formats should be open-source structured data formats.[266] The Commission believes that any reporting languages or protocols adopted by registered SDRs must be open-source structured data formats that are widely used by participants, and that information about how to use any such language or protocol is freely and openly available.[267]

The Commission believes that, however registered SDRs permit their participants to report security-based swap transaction data to the SDRs, those SDRs should be able to provide to the Commission normalized and uniform data, so that the transaction data can readily be used for regulatory purposes without the Commission itself having to cleanse or normalize the data.[268]

based swap or life cycle event that a reporting party must report. In addition, proposed Rule 907(a)(4) would have required a registered SDR to establish policies and procedures for reporting and publicly disseminating life cycle events, among other things. The Commission is consolidating the requirements to establish policies and procedures for reporting life cycle events in final Rule 907(a)(3). *See infra* Section XII(C). The Commission also revised Rule 907(a)(1) so that the final rule text refers to the data elements ''that must be reported,'' rather than the data elements that a reporting side must report.

[259] While an SDR would have flexibility regarding the data elements and the protocols for reporting to the SDR, pursuant to Rule 13n–4(a)(5), which is being adopted in the SDR Adopting Release, the data provided by an SDR to the Commission must ''be in a form and manner acceptable to the Commission. . . .'' The Commission anticipates that it will specify the form and manner that will be acceptable to it for the purposes of direct electronic access.

[260] *See* DTCC II at 20.

[261] *Id.*

[262] *See* DTCC V at 11.

[263] *See* Better Markets I at 4.

[264] *See* DTCC II at 16; ISDA I at 4; ISDA/SIFMA I at 8.

[265] *But see infra* note 268.

[266] *See* Barnard Letter at 3.

[267] One commenter argued that the Commission should not require registered SDRs to support all connectivity methods, as the costs to do so would be prohibitive. *See* DTCC II at 20. Under Rule 907(a)(2), as adopted, a registered SDR need not support all connectivity methods or data formats. A registered SDR may elect to support only one data format, provided that it is ''an open-source structured data format that is widely used by participants.''

[268] *See* SDR Adopting Release, Section VI(D)(2)(c)(ii) (''data provided by an SDR to the Commission must be in a form and manner acceptable to the Commission . . . [T]he form and manner with which an SDR provides the data to the Commission should not only permit the Commission to accurately analyze the data maintained by a single SDR, but also allow the Commission to aggregate and analyze data received from multiple SDRs. The Commission continues to consider whether it should require the data to be provided to the Commission in a particular format. The Commission anticipates that it will propose for public comment detailed specifications of acceptable formats and taxonomies that would facilitate an accurate interpretation, aggregation, and analysis of [security-based swap] data by the Commission. The Commission intends to maximize the use of any applicable current industry standards for the description of [security-based swap] data, build upon such standards to accommodate any

Continued

However, it does not follow that information must be *submitted* to a registered SDR using a single electronic reporting format. The Commission believes that a registered SDR should be permitted to make multiple reporting formats available to its participants if it chooses, provided that the registered SDR can quickly and easily normalize and aggregate the reported data in making it accessible to the Commission and other relevant authorities. If a registered SDR is not willing or able to normalize data submitted pursuant to multiple data formats, then its policies and procedures under Rule 907(a)(2) should prescribe a single data format for participants to use to submit data to the registered SDR.

The Commission believes that the policies and procedures of a registered SDR, required by Rule 907(a)(1), likely will need to explain the method for reporting if all the security-based swap transaction data required by Rules 901(c) and 901(d) are being reported simultaneously, and how to report if responsive data are being provided at separate times.[269] One way to accomplish this would be for the registered SDR to link the two reports by the transaction ID, which could be done by providing the reporting side with the transaction ID after the reporting side reports the information required by Rule 901(c). The reporting side would then include the transaction ID with its submission of data required by Rule 901(d), thereby allowing the registered SDR to match the report of the Rule 901(c) data and the subsequent report of the Rule 901(d) data.

Finally, Rule 901(h), as re-proposed, would have provided: ''A reporting side shall electronically transmit the information required under this section in a format required by the registered security-based swap data repository, and in accordance with any applicable policies and procedures of the registered security-based swap data repository.'' The Commission received only one comment on Rule 901(h), which is addressed above.[270] The Commission is adopting Rule 901(h) as re-proposed, with two minor revisions to clarify the rule. First, the rule text has been revised to refer to ''A'' reporting side instead of ''The'' reporting side. Accordingly, the Commission has revised Rule 901(h) to refer to the registered SDR to which a reporting side reports transactions. Second, Rule 901(h), as adopted, does not include the phrase ''and in accordance with any applicable policies and procedures of the registered security-based swap data repository.'' The Commission believes that it is sufficient for the rule to state that the reporting side must report the transaction information ''in a format required by'' the registered SDR.[271]

C. Rule 907(a)(6)—Ultimate Parent IDs and Counterparty IDs

As originally proposed, Rule 907(a)(6) would have required a registered SDR to establish and maintain written policies and procedures ''[f]or periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any other participant(s) with which the *counterparty* is affiliated, using ultimate parent IDs and participant IDs'' (emphasis added). The Commission re-proposed Rule 907(a)(6) with the word ''participant'' in place of the word ''counterparty.'' Re-proposed Rule 907(a)(6) would have required a registered SDR to establish and maintain written policies and procedures for periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any other participant(s) with which the counterparty is affiliated, using ultimate parent IDs and participant IDs. The Commission received one comment relating to Rule 907(a)(6), which suggested that parent and affiliate information could be maintained by a market utility rather than by one or more registered SDRs.[272]

The Commission notes that Regulation SBSR neither requires nor prohibits the development of a market utility for parent and affiliate information. Regulation SBSR requires a registered SDR to obtain parent and affiliate information from its participants and to maintain it, whether or not a market utility exists. Regulation SBSR does not prohibit SDR participants from storing parent and affiliate information in a market utility or from having the market utility report such information to a registered SDR as agent on their behalf, so long as the information is provided to the registered SDR in a manner consistent with Regulation SBSR and the registered SDR's policies and procedures.

The Commission is adopting Rule 907(a)(6) substantially as re-proposed, with a technical change to replace the word ''counterparty'' with the word ''participant'' and a conforming change to replace the reference to ''participant IDs'' with a reference to ''counterparty IDs.'' Thus, final Rule 907(a)(6) requires a registered SDR to establish and maintain written policies and procedures ''[f]or periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any participant(s) with which the *participant* is affiliated, using ultimate parent IDs and *counterparty* IDs'' (emphasis added).

V. Who Reports—Rule 901(a)

A. Proposed and Re-Proposed Rule 901(a)

Section 13(m)(1)(F) of the Exchange Act[273] provides that parties to a security-based swap (including agents of parties to a security-based swap) shall be responsible for reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission. Section 13(m)(1)(G) of the Exchange Act[274] provides that each security-based swap, ''whether cleared or uncleared,'' shall be reported to a registered SDR. Section 13A(a)(3) of the Exchange Act[275] specifies the party obligated to report a security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization. Rule 901(a), as adopted, assigns to specific persons the duty to report certain security-based swaps to a registered SDR, thereby

additional data fields as may be required, and develop such formats and taxonomies in a timeframe consistent with the implementation of [security-based swap] data reporting by SDRs. The Commission recognizes that as the [security-based swap] market develops, new or different data fields may be needed to accurately represent new types of [security-based swaps], in which case the Commission may provide updated specifications of formats and taxonomies to reflect these new developments. Until such time as the Commission adopts specific formats and taxonomies, SDRs may provide direct electronic access to the Commission to data in the form in which the SDRs maintain such data'').

[269] Regulation SBSR, as proposed and re-proposed, contemplated two ''waves'' of reporting: The Rule 901(c) information would have been required to be reported in real time, while the Rule 901(d) information could have been provided later (depending on the type of transaction, perhaps as much as one day after time of execution). However, because Regulation SBSR, as adopted, requires both sets of information to be reported within 24 hours of execution, the Commission anticipates that many reporting sides will choose to report both sets of information in only a single transaction report. Under Rule 901, as adopted, a reporting side is not prohibited from reporting the Rule 901(c) information before the Rule 901(d) information, provided that the policies and procedures of the registered SDR permit this outcome, and both sets of information are reported within the timeframes specified in Rule 901(j).

[270] *See supra* note 263 and accompanying text.

[271] As noted above, the Commission anticipates that it will propose for public comment detailed specifications of acceptable formats and taxonomies that would facilitate an accurate interpretation, aggregation, and analysis by the Commission of security-based swap data submitted to it by an SDR. *See supra* note 268.

[272] *See* GS1 Proposal at 44.

[273] 15 U.S.C. 78m(m)(1)(F).

[274] 15 U.S.C. 78m(m)(1)(G).

[275] 15 U.S.C. 78mA(a)(3).

implementing Sections 13(m)(1)(F), 13(m)(1)(G), and 13A(a)(3) of the Exchange Act. In addition, in the Regulation SBSR Proposed Amendments Release, the Commission is proposing revisions to Rule 901(a), as adopted, to further implement these provisions of the Exchange Act as they apply to clearing transactions (as defined below) and transactions executed on platforms and that will be submitted to clearing.

As originally proposed, Rule 901(a) would have assigned reporting duties exclusively to one of the direct counterparties to a security-based swap based on the nationality of the counterparties. The original proposal contemplated three scenarios: Both direct counterparties are U.S. persons, only one direct counterparty is a U.S. person, or neither direct counterparty is a U.S. person.[276] Under the original proposal, if only one counterparty to a security-based swap is a U.S. person, the U.S. person would have been the reporting party. If neither counterparty is a U.S. person (and assuming the security-based swap is subject to Regulation SBSR), the counterparties would have been required to select the reporting party. Where both counterparties to a security-based swap are U.S. persons, the reporting party would have been determined according to the following hierarchy:

(i) If only one counterparty is a security-based swap dealer or major security-based swap participant, the security-based swap dealer or major security-based swap participant would be the reporting party.

(ii) If one counterparty is a security-based swap dealer and the other counterparty is a major security-based swap participant, the security-based swap dealer would be the reporting party.

(iii) With respect to any other security-based swap, the counterparties to the security-based swap would be required to select the reporting party.

Under Rule 901(a) as originally proposed, for a security-based swap between: (1) A non-registered U.S. person; and (2) a security-based swap dealer or major security-based swap participant that is a non-U.S. person, the non-registered U.S. person would have been the reporting party. The Commission preliminarily believed that, as between a U.S. person and a non-U.S. person, it was more appropriate to assign the duty to report to the U.S. person, even if the non-U.S. person was a security-based swap dealer or major security-based swap participant.[277]

In the Cross-Border Proposing Release, the Commission revised proposed Rule 901(a) in two significant ways. First, the Commission proposed to expand the scope of Regulation SBSR to require reporting (and, in certain cases, public dissemination) of any security-based swap that has a U.S. person acting as guarantor of one of the direct counterparties, even if neither direct counterparty is a U.S. person. To effectuate this requirement, the Cross-Border Proposing Release added the following new defined terms: ''direct counterparty,'' ''indirect counterparty,'' ''side,'' and ''reporting side.'' A ''side'' was defined to mean a direct counterparty of a security-based swap and any indirect counterparty that guarantees the direct counterparty's performance of any obligation under the security-based swap.[278] The Commission revised proposed Rule 901(a) to assign the duty to report to a ''reporting side,'' rather than a specific counterparty. Re-proposed Rule 901(a) generally preserved the reporting hierarchy of Rule 901(a), as originally proposed, while incorporating the ''side'' concept to reflect the possibility that a security-based swap might have an indirect counterparty that is better suited for carrying out the reporting duty than a direct counterparty. Thus, Rule 901(a), as re-proposed in the Cross-Border Proposing Release, would have assigned the reporting obligation based on the status of each person on a side (*i.e.*, whether any person on the side is a security-based swap dealer or major security-based swap participant), rather than the status of only the direct counterparties. Second, the Commission proposed to expand the circumstances in which a security-based swap dealer or major security-based swap participant that is not a U.S. person would incur the duty to report a security-based swap.

Under Rule 901(a), as originally proposed, a non-U.S. person that is a direct counterparty to a security-based swap that was not executed in the United States or through any means of interstate commerce never would have had a duty to report the security-based swap, even if the non-U.S. person was a security-based swap dealer or major security-based swap participant or was guaranteed by a U.S. person. As re-proposed in the Cross-Border Proposing Release, Rule 901(a) re-focused the reporting duty primarily on the status of the counterparties, rather than on their nationality or place of domicile. Under re-proposed Rule 901(a), the nationality of the counterparties would determine who must report only if neither side included a security-based swap dealer or major security-based swap participant. In such case, if one side included a U.S. person while the other side did not, the side with the U.S. person would have been the reporting side. Similar to the original proposal, however, if both sides included a U.S. person or neither side included a U.S. person, the sides would have been required to select the reporting side.

B. Final Rule 901(a)

Rule 901(a), as adopted, establishes a ''reporting hierarchy'' that specifies the side that has the duty to report a security-based swap.[279] The reporting side, as determined by the reporting hierarchy, is required to submit the information required by Regulation SBSR to a registered SDR.[280] The reporting side may select the registered SDR to which it makes the required

[276] *See* proposed Rules 901(a)(1)–(3); Regulation SBSR Proposing Release, 75 FR 75211.

[277] *See* Regulation SBSR Proposing Release, 75 FR 75211.

[278] *See* re-proposed Rule 900(ee); Cross-Border Proposing Release, 78 FR 31211. The Commission is adopting this term in Rule 900(hh) with a minor modification to more clearly incorporate the definition of ''indirect counterparty.'' Final 900(hh) defines ''side'' to mean ''a direct counterparty and any guarantor of that direct counterparty's performance who meets the definition of indirect counterparty in connection with the security-based swap.'' Final Rule 900(p) defines ''indirect counterparty'' to mean ''a guarantor of a direct counterparty's performance of any obligation under a security-based swap such that the direct counterparty on the other side can exercise rights of recourse against the indirect counterparty in connection with the security-based swap; for these purposes a direct counterparty has rights of recourse against a guarantor on the other side if the direct counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the guarantor in connection with the security-based swap.''

[279] However, Rule 901(a) does not address who has the reporting duty for the following types of security-based swaps: (1) A clearing transaction; (2) a security-based swap that is executed on a platform and that will be submitted to clearing; (3) a security-based swap where neither side includes a registered security-based swap dealer, a registered major security-based swap participant, or a U.S. person; and (4) a security-based swap where one side consists of a non-registered U.S. person and the other side consists of a non-registered non-U.S. person.

[280] Final Rule 900(gg) defines ''reporting side'' to mean ''the side of a security-based swap identified by § 242.901(a)(2).'' Rule 900(cc), as re-proposed, would have defined ''reporting side'' to mean ''the side of a security-based swap having the duty to report information in accordance with §§ 242.900 through 911 to a registered security-based swap data repository, or, if there is no registered security-based swap data repository that would receive the information, to the Commission.'' Final Rule 900(gg) modifies the definition to define the reporting side by reference to final Rule 901(a), which identifies the person that will be obligated to report a security-based swap to a registered SDR under various circumstances.

report. However, with respect to any particular transaction, all information required to be reported by Rule 901(a)(2)(ii), as adopted, must be reported to the same registered SDR. In the Regulation SBSR Proposed Amendments Release, issued as a separate release, the Commission is proposing additional provisions of Rule 901(a) that would assign reporting responsibilities for clearing transactions and platform-executed security-based swaps that will be submitted to clearing. The Commission also anticipates soliciting further comment on reporting duties for a security-based swap where neither side includes a registered security-based swap dealer or major security-based swap participant and neither side includes a U.S. person or only one side includes a U.S. person.[281]

1. Reporting Hierarchy

Final Rule 901(a)(2)(ii) adopts the reporting hierarchy largely as proposed in the Cross-Border Proposing Release, but limits its scope. The reporting hierarchy in Rule 901(a), as proposed and as re-proposed in the Cross-Border Proposing Release, did not contain separate provisions to address reporting responsibilities for two kinds of security-based swaps that are described in the Regulation SBSR Proposed Amendments Release: Clearing transactions and security-based swaps that are executed on a platform and that will be submitted to clearing. The Regulation SBSR Proposed Amendments Release solicits comment on proposed rules that address the reporting of these types of security-based swaps. The reporting hierarchy in Rule 901(a)(2)(ii), as adopted, applies to security-based swaps that are covered transactions.[282] The reporting hierarchy is designed to locate the duty to report with counterparties who are most likely to have the resources and who are best able to support the reporting function.

Specifically, final Rule 901(a)(2)(ii) provides that, for a covered transaction, the reporting side will be as follows:

(A) If both sides of the security-based swap include a registered security-based swap dealer, the sides shall select the reporting side.

(B) If only one side of the security-based swap includes a registered security-based swap dealer, that side shall be the reporting side.

(C) If both sides of the security-based swap include a registered major security-based swap participant, the sides shall select the reporting side.

(D) If one side of the security-based swap includes a registered major security-based swap participant and the other side includes neither a registered security-based swap dealer nor a registered major security-based swap participant, the side including the registered major security-based swap participant shall be the reporting side.

(E) If neither side of the security-based swap includes a registered security-based swap dealer or registered major security-based swap participant: (1) If both sides include a U.S. person, the sides shall select the reporting side. (2) [Reserved].[283]

The following examples explain the operation of final Rule 901(a)(2)(ii). For each example, assume that the relevant security-based swap is not executed on a platform.

- *Example 1.* A non-registered U.S. person executes a security-based swap with a registered security-based swap dealer that is a non-U.S. person. Neither side has a guarantor. The registered security-based swap dealer is the reporting side.
- *Example 2.* Same facts as Example 1, except that the non-registered U.S. person is guaranteed by a registered security-based swap dealer. Because both sides include a person that is a registered security-based swap dealer, the sides must select which is the reporting side.
- *Example 3.* Two private funds execute a security-based swap. Both direct counterparties are U.S. persons, neither is guaranteed, and neither is a registered security-based swap dealer or registered major security-based swap participant. The sides must select which is the reporting side.

In Rule 901(a)(2)(ii), as adopted, the Commission has included the word ''registered'' before each instance of the terms ''security-based swap dealer'' and ''major security-based swap participant.'' A person is a security-based swap dealer or major security-based swap participant if that person meets the statutory definition of that term, regardless of whether the person registers with the Commission.[284] A person meeting one of those statutory definitions must register with the Commission in that capacity. However, persons meeting one of the statutory definitions cannot register in the appropriate capacity until the Commission adopts registration rules for these classes of market participant. The Commission has proposed but not yet adopted registration rules for security-based swap dealers and major security-based swap participants. Thus, currently, there are no registered security-based swap dealers even though many market participants act in a dealing capacity in the security-based swap market.

Including the word ''registered'' before each instance of the terms ''security-based swap dealer'' and ''major security-based swap participant'' in final Rule 901(a)(2)(ii) means that it will not be necessary for a person to evaluate whether it meets the definition of ''security-based swap dealer'' or ''major security-based swap participant'' solely in connection with identifying which counterparty must report a

[281] The Commission notes that Rule 901(a), as adopted, does address how the reporting duty is assigned when both sides include a U.S. person and neither side includes a registered security-based swap dealer or a registered major security-based swap participant. In that case, the sides would be required to select which is the reporting side. *See* Rule 901(a)(2)(ii)(E)(1).

[282] *See supra* notes 11–12 and accompanying text.

[283] This provision, as set forth in the Cross-Border Proposing Release, would have provided: ''If neither side of the security-based swap includes a security-based swap dealer or major security-based swap participant: (i) If both sides include a U.S. person or neither side includes a U.S. person, the sides shall select the reporting side. (ii) If only one side includes a U.S. person, that side shall be the reporting side.'' The Commission anticipates seeking further comment on how Title VII should apply to non-U.S. persons who engage in certain security-based swap activities in the United States, particularly dealing activities. Accordingly, the Commission is not deciding at this time how Regulation SBSR will apply to (1) transactions where there is no U.S. person, registered security-based swap dealer, or registered major security-based swap participant on either side; and (2) transactions where there is no registered security-based swap dealer or registered major security-based swap participant on either side and there is a U.S. person on only one side. One commenter recommended that this proposed part of the hierarchy be revised to refer only to cases where both sides are U.S. persons, as the commenter did not believe that a security-based swap for which neither party is a security-based swap dealer, major security-based swap participant, or a U.S. person would be subject to reporting under Regulation SBSR. *See* ISDA IV at 19. As discussed, the Commission is not adopting this provision of proposed Rule 901(a). The Commission anticipates seeking further comment on how Title VII should apply to non-U.S. persons who engage in certain security-based swap activities in the United States, particularly dealing activities, and is not deciding at this time how Regulation SBSR will apply to transactions where there is no U.S. person, registered security-based swap dealer, or registered major security-based swap participant on either side. The Commission notes that, under final Rule 908(a)(1)(ii), a security-based swap is subject to regulatory reporting and public dissemination if it was accepted for clearing by a clearing agency having its principal place of business in the United States. *See infra* Section XV(C)(4).

[284] *See* Section 3(a)(71) of the Exchange Act, 15 U.S.C. 78c(a)(71) (defining ''security-based swap dealer''); Section 3(a)(67) of the Exchange Act, 15 U.S.C. 78c(a)(67) (defining ''major security-based swap participant''). *See also* 17 CFR 240.3a71–2 (describing the time at which a person will be deemed to be a security-based swap dealer); 17 CFR 240.3a67–8 (describing the time at which a person will be deemed to be a major security-based swap participant).

security-based swap under Regulation SBSR.[285]

A result of the Commission's determination to apply duties in Rule 901(a)(2)(ii) based on registration status rather than on meeting the statutory definition of ''security-based swap dealer'' or ''major security-based swap participant'' is that, until such persons register with the Commission as such, all covered transactions will fall within Rule 901(a)(2)(ii)(E). In other words, under the adopted reporting hierarchy, because neither side of the security-based swap includes a *registered* security-based swap dealer or *registered* major security-based swap participant, the sides shall select the reporting side.

2. Other Security-Based Swaps

Rule 901(a), as proposed and re-proposed in the Cross-Border Proposing Release, did not differentiate between platform-executed security-based swaps and other types of security-based swaps in assigning the duty to report. Similarly, the proposed and re-proposed rule would have assigned reporting obligations without regard to whether a particular security-based swap was cleared or uncleared.[286] In the Regulation SBSR Proposing Release, the Commission expressed a preliminary view that cleared and uncleared security-based swaps should be subject to the same reporting procedures.[287] The Commission preliminarily believed that security-based swap dealers and major security-based swap participants generally should be responsible for reporting security-based swap transactions of all types, because they are more likely than other counterparties to have appropriate systems in place to facilitate reporting.[288]

Commenters raised a number of concerns about the application of the reporting hierarchy to platform-executed security-based swaps that will be submitted to clearing and clearing transactions.[289] The Commission has determined that final resolution of these issues would benefit from further consideration and public comment. Accordingly, in the Regulation SBSR Proposed Amendments Release, the Commission is proposing amendments to Rule 901(a) that would assign the reporting obligation for clearing transactions and platform-executed security-based swaps that will be submitted to clearing.

To differentiate between security-based swaps that are subject to the reporting hierarchy in Rule 901(a)(2)(ii) and those that are not, the Commission is defining a new term, ''clearing transaction,'' in Rule 900(g). A ''clearing transaction'' is ''a security-based swap that has a registered clearing agency as a direct counterparty.'' [290] This definition encompasses all security-based swaps that a registered clearing agency enters into as part of its security-based swap clearing business. The definition includes, for example, any security-based swaps that arise if a registered clearing agency accepts a security-based swap for clearing, as well as any security-based swaps that arise as part of a clearing agency's internal processes, such as security-based swaps used to establish prices for cleared products and security-based swaps that result from netting other clearing transactions of the same product in the same account into an open position.[291]

Two models of clearing—an agency model and a principal model—are currently used in the swap markets. In the agency model, which predominates in the U.S. swap market, a swap that is accepted for clearing—often referred to in the industry as an ''alpha''—is terminated and replaced with two new swaps, known as ''beta'' and ''gamma.'' The Commission understands that, under the agency model, one of the direct counterparties to the alpha becomes a direct counterparty to the beta, and the other direct counterparty to the alpha becomes a direct counterparty to the gamma. The clearing agency would be a direct counterparty to each of the beta and the gamma.[292] This release uses the terms ''alpha,'' ''beta,'' and ''gamma'' in the same way that they are used in the agency model of clearing in the U.S. swap market.[293] The Commission notes that, under Regulation SBSR, an alpha is not a ''clearing transaction,'' even though it is submitted for clearing, because it does not have a registered clearing agency as a direct counterparty.[294]

[285] As the Commission noted in the Cross-Border Adopting Release, the assessment costs for making such evaluations are likely to be substantial. *See* Cross-Border Adopting Release, 79 FR 47330–34. The Commission's approach here is consistent with the approach described in the Cross-Border Adopting Release, where the Commission noted that security-based swap dealers and major security-based swap participants ''will not be subject to the requirements applicable to those dealers and major participants until the dates provided in the applicable final rules.'' 79 FR 47368. *See also* Intermediary Definitions Adopting Release, 77 FR 30700.

[286] *See* 75 FR 75211.

[287] *See id.*

[288] *See id.*

[289] *See infra* Section V(C) for an overview of these comments. A detailed summary of and response to these comments appears in the Regulation SBSR Proposed Amendments Release.

[290] In connection with the definition of ''clearing transaction,'' the Commission is adopting a definition of ''registered clearing agency.'' Final Rule 900(ee) defines ''registered clearing agency'' to mean ''a person that is registered with the Commission as a clearing agency pursuant to section 17A of the Exchange Act (15 U.S.C. 78q–1) and any rules or regulations thereunder.'' In addition, the Commission is not adopting re-proposed Rule 900(h), which would have defined the term ''derivatives clearing organization'' to have the same meaning as provided under the Commodity Exchange Act. This term is not used in Regulation SBSR, as adopted, so the Commission is not including a definition of the term in Rule 900.

[291] Under Rule 900(g), a security-based swap that results from clearing is an independent security-based swap and not a life cycle event of a security-based swap that is submitted to clearing. Thus, Rule 901(e), which addresses the reporting of life cycle events, does not address what person has the duty to report the clearing transactions that arise when a security-based swap is accepted for clearing.

[292] If both direct counterparties to the alpha are clearing members, the direct counterparties would submit the transaction to the clearing agency directly and the resulting beta would be between the clearing agency and one clearing member, and the gamma would be between the clearing agency and the other clearing member. The Commission understands, however, that, if the direct counterparties to the alpha are a clearing member and a non-clearing member (a ''customer''), the customer's side of the trade would be submitted for clearing by a clearing member acting on behalf of the customer. When the clearing agency accepts the alpha for clearing, one of the resulting swaps—in this case, assume the beta—would be between the clearing agency and the customer, with the customer's clearing member acting as guarantor for the customer's trade. The other resulting swap—the gamma—would be between the clearing agency and the clearing member that was a direct counterparty to the alpha. *See, e.g.*, Byungkwon Lim and Aaron J. Levy, ''Contractual Framework for Cleared Derivatives: The Master Netting Agreement Between a Clearing Customer Bank and a Central Counterparty,'' 10 Pratt's Journal of Bankruptcy Law (October 2014) 509, 515–17 (describing the clearing model for swaps in the United States).

[293] In the principal model of clearing, which the Commission understands is used in certain foreign swap markets, a customer is not a direct counterparty of the clearing agency. Under this model, a clearing member would clear a security-based swap for a customer by entering into a back-to-back swap with the clearing agency: The clearing member would become a direct counterparty to a swap with the customer, and then would become a counterparty to an offsetting swap with the clearing agency. In this circumstance, unlike in the agency model of clearing, the swap between the direct counterparties might not terminate upon acceptance for clearing.

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

C. Discussion of Comments and Basis for Final Rule

The Commission requested and received comment on a wide range of issues related to Rule 901(a), as proposed and re-proposed in the Cross-Border Proposing Release. As described in more detail below, commenters addressed a number of topics, including the application of Rule 901(a) to sides rather than direct counterparties, the role of agents in the reporting process, the application of Rule 901(a) to cleared security-based swaps, and the types of entities that should be required to report security-based swaps.

1. Application of the Reporting Hierarchy to Sides

The Commission received a number of comments on the reporting hierarchy in proposed Rule 901(a).[295] As described in the Cross-Border Proposing Release, a number of commenters objected to the reporting hierarchy in Rule 901(a), as originally proposed, on the grounds that it would unfairly impose reporting burdens on non-registered U.S.-person counterparties that enter into security-based swaps with non-U.S.-person security-based swap dealers or major security-based swap participants.[296] In the Cross-Border Proposing Release, the Commission re-proposed a modified reporting hierarchy in response to the commenters' concerns.[297]

The Commission believes that a non-registered person should not incur the duty to report a security-based swap when a registered security-based swap dealer or registered major security-based swap participant, directly or indirectly, is on the other side of the transaction, and is adopting the reporting hierarchy in Rule 901(a)(2)(ii) to effect this result. Rule 901(a), as adopted, is designed to assign reporting duties to the person best positioned to discharge those duties. The Commission believes that registered security-based swap dealers and registered major security-based swap participants, regardless of whether they are U.S. persons, will have greater technological capability than non-registered persons to report security-based swaps as required by Regulation SBSR. Accordingly, the Commission is adopting the reporting hierarchy in Rule 901(a)(2)(ii) largely as re-proposed to give registered security-based swap dealers and registered major security-based swap participants reporting obligations, regardless of whether they are U.S. persons. Furthermore, the Commission believes that it is appropriate to assign the duty to report to the side that includes a non-U.S. person registered security-based swap dealer or major security-based swap participant, even as an indirect counterparty, if neither the direct or indirect counterparty on the other side includes a registered security-based swap dealer or a registered major security-based swap participant. The fact that a person is a registered security-based swap dealer or registered major security-based swap participant implies that the person has substantial contacts with the U.S. security-based swap market and thus would understand that it could incur significant regulatory duties arising from its security-based swap business, or has voluntarily registered and chosen to undertake the burdens associated with such registration. The fact that a person is a registered security-based swap dealer or registered major security-based swap participant also implies that the person has devoted substantial infrastructure and administrative resources to its security-based swap business, and thus would be more likely to have the capability to carry out the reporting function than a non-registered counterparty.

In response to the Cross-Border Proposing Release, one commenter raised concerns about burdens that the re-proposed reporting hierarchy might place on U.S. persons.[298] This commenter noted that certain non-U.S. persons might engage in security-based swap dealing activities in the United States below the *de minimis* threshold for security-based swap dealer registration. The commenter expressed the view that an unregistered non-U.S. person that is acting in a dealing capacity likely would have ''greater technological capability and resources available to fulfill the reporting function'' than an unregistered U.S. person that is not acting in a dealing capacity.[299] The commenter suggested that, when an unregistered U.S. person enters into a security-based swap with an unregistered non-U.S. person that is acting in a dealing capacity, it ''would be more efficient and fair'' to allow the counterparties to choose the reporting side than to assign the reporting obligation to the unregistered U.S. person.[300]

The Commission acknowledges these comments. The Commission did not propose, and is not adopting, rules that would permit counterparties to choose to impose reporting burdens on the unregistered non-U.S. person that is acting in a dealing capacity in this scenario. The Commission believes that the issue of whether the counterparties should be able to choose the reporting side when an unregistered non-U.S. person acts in a dealing capacity with respect to a security-based swap involving an unregistered U.S. person would benefit from further comment. Accordingly, Rule 901(a)(2)(ii), as adopted, does not assign a reporting side for security-based swaps involving an unregistered non-U.S. person and an unregistered U.S. person.

Other commenters focused on the Commission's proposal to introduce the ''side'' concept to the reporting hierarchy. In response to the Cross-Border Proposing Release, three comments recommended that direct counterparties bear reporting duties, rather than sides (*i.e.,* that guarantors of direct counterparties not incur reporting responsibilities).[301] One of these commenters recommended that a non-U.S. company that provides its U.S. affiliate with a guarantee should not be subject to reporting responsibilities because the non-U.S. company would be outside the Commission's jurisdiction.[302] Another commenter noted that non-U.S. guarantors should not cause a security-based swap to become reportable.[303] The Commission generally agrees with these comments. As discussed in more detail in Section XV(C)(5), *infra,* Rule 908(a) of Regulation SBSR makes clear that a non-U.S. person guarantor would not cause a security-based swap to become reportable, unless the guarantor is a registered security-based swap dealer or a registered major security-based swap participant.[304] Moreover, Rule 908(b)

[295] *See* ISDA/SIFMA I at 19; DTCC II at 8; ICI I at 5 (stating that security-based swap dealers are the only market participants that currently have the standardization necessary to report the required security-based swap data); SIFMA I at 3 (arguing that an end user should not incur higher transaction costs or potential legal liabilities depending on the domicile of its counterparty); Vanguard Letter at 6 (stating that non-U.S. person security-based swap dealers and major security-based swap participants would be more likely to have appropriate systems in place to facilitate reporting than unregistered counterparties).

[296] *See* Cross-Border Proposing Release, 78 FR 31066. *See also* note 295, *supra* (describing the relevant comments).

[297] *See* re-proposed Rule 901(a); Cross-Border Proposing Release, 78 FR 31066, 31212.

[298] *See* IIB Letter at 26.

[299] *See id.*

[300] *See id.*

[301] *See* JSDA Letter at 6; ISDA III; ISDA IV at 3–4.

[302] *See* JSDA Letter at 6.

[303] *See* ISDA IV at 4 (recommending that the Commission should not include non-U.S. person guarantors in the definition of ''indirect counterparty'').

[304] Section XV(C)(5), *infra,* explains why the Commission has determined that security-based swaps having non-U.S. person guarantors that are registered as security-based swap dealers or major

provides that, notwithstanding any other provision of Regulation SBSR, a non-U.S. person guarantor of a security-based swap that is reportable would not incur any obligation under Regulation SBSR, including a reporting obligation under Rule 901(a)(2)(ii), unless the guarantor is a registered security-based swap dealer or a registered major security-based swap participant. Thus, for a security-based swap involving, on one side, the guaranteed U.S. affiliate of an unregistered non-U.S. person, only the guaranteed U.S. affiliate could incur reporting obligations under Regulation SBSR.[305]

The Commission disagrees with the broader point made by the commenters, however, and continues to believe that it is appropriate to adopt a final rule that places the reporting duty on the reporting side, rather than on a specific counterparty on the reporting side. The Commission notes that Rule 908(b)—which is discussed in more detail in Section XV, *infra*—limits the types of counterparties that incur obligations under Regulation SBSR to U.S. persons, registered security-based swap dealers, and registered major security-based swap participants. A person that does not fall within one of the categories enumerated in Rule 908(b) incurs no duties under Regulation SBSR. Accordingly, there may be situations where the direct counterparty on the reporting side—rather than the indirect counterparty, as in the commenter's example—would not fall within Rule 908(b) and therefore would incur no obligation under Regulation SBSR.[306] There will be cases where all counterparties on the reporting side fall within Rule 908(b). In these cases, Rule 901(a)(2)(ii), as adopted, provides reasonable flexibility to the counterparties on the reporting side to determine the specific person who will carry out the function of reporting the security-based swap on behalf of the reporting side. As stated in the Cross-Border Proposing Release, the Commission ''understands that many reporting parties already have established linkages to entities that may register as registered SDRs, which could significantly reduce the out-of-pocket costs associated with establishing the reporting function.''[307] A reporting side could leverage these existing linkages, even if the entity that has established connectivity to the registered SDR is an indirect counterparty to the transaction.

The other commenters argued that incorporating indirect counterparties into current reporting practices could take considerable effort, because these practices, developed for use with the CFTC's swap data reporting regime, do not consider the registration status of indirect counterparties.[308] The commenter recommended that the industry should be permitted to use existing reporting party determination logic because negotiating the identity of the reporting side on a trade-by-trade basis would not be feasible.[309] Furthermore, one commenter noted that there is no industry standard source for information about indirect counterparties. As a result, ''despite the requirement for participants to [provide] this information to [a registered SDR], there is a chance that the parties . . . could come up with a different answer as to which of them is associated with an indirect counterparty.''[310]

The Commission acknowledges these commenters' concerns, but continues to believe that it is appropriate for the reporting hierarchy to take into account both the direct and indirect counterparties on each side. Even without an industry standard source for information about indirect counterparties, counterparties to security-based swaps will need to know the identity and status of any indirect counterparties on a trade-by-trade basis to determine whether the transaction is subject to Regulation SBSR under final Rule 908(a).[311] By considering the status of indirect counterparties when assigning reporting obligations, Regulation SBSR is designed to reduce reporting burdens on non-registered persons without imposing significant new costs on other market participants, even though market participants may need to modify their reporting workflows. The Commission believes that market participants could adapt the mechanisms they develop for purposes of adhering to Rule 908(a) to facilitate compliance with the reporting hierarchy in Rule 901(a)(2)(ii). For example, the documentation for the relevant security-based swap could alert both direct counterparties to the fact that one counterparty's obligations under the security-based swap are guaranteed by a registered security-based swap dealer or registered major security-based swap participant. The counterparties can use that information to identify which side would be the reporting side for purposes of Regulation SBSR.

The Commission further believes that incorporating indirect counterparties into current reporting workflows is unlikely to cause substantial disruption to existing reporting logic because the status of an indirect counterparty likely will alter reporting practices in few situations. Most transactions in the security-based swap market today involve at least one direct counterparty who is likely to be a security-based swap dealer.[312] In such case, the current industry practice of determining the reporting side based only on the status of direct counterparties is likely to produce a result that is consistent with Rule 901.[313] The Commission understands that, in the current security-based swap market, market participants that are likely to be non-registered persons transact with each other only on rare occasions. In these circumstances, the status of an indirect counterparty could cause one side to become the reporting side, rather than leaving the choice of reporting side to the counterparties. For example, if a registered security-based swap dealer or registered major security-based swap participant guarantees one side of such a trade, the side including the non-registered person and the guarantor would, under Rule 901(a)(2), be the reporting side. The Commission believes that, if a registered security-based swap dealer or registered major security-based swap participant is willing to accept the responsibility of guaranteeing the performance of duties

security-based swap participants should be reportable under Regulation SBSR.

[305] If the non-U.S. person guarantor is a registered security-based swap dealer or major security-based swap participant, the exclusion in Rule 908(b) would not apply, and both the direct and indirect counterparties would jointly incur the duty to report.

[306] Rule 908(a) describes when Regulation SBSR applies to a security-based swap having at least one side that includes a non-U.S. person. *See infra* Section XV(C).

[307] 78 FR 31066 (citing Regulation SBSR Proposing Release, 75 FR 75265).

[308] *See* ISDA III; ISDA IV at 3–4 (noting also that Canada's swap data reporting regime resembles the CFTC's swap data reporting regime in so far as it does not consider the status of indirect counterparties).

[309] *See* ISDA III.

[310] *Id. See also* ISDA IV at 3–4.

[311] *See infra* Section XV.

[312] *See* Cross-Border Adopting Release, 79 FR 47293 (noting that transactions between two ISDA-recognized dealers represent the bulk of trading activity in the single-name credit default swap market).

[313] Assume, for example, that a security-based swap dealer executes a transaction with a non-registered person, and that current industry practices default the reporting obligation to the security-based swap dealer. This result is consistent with Rule 901(a)(2)(ii)(B), which states that the side including the registered security-based swap dealer will be the reporting side for such transactions. Assume, however, that the non-registered direct counterparty is guaranteed by another registered security-based swap dealer. Because both sides include a registered security-based swap dealer, Rule 901(a)(2)(ii)(A) requires the sides to select the reporting side. Agreeing to follow current industry practices—and locating the duty on the side that has the direct counterparty that is a registered security-based swap dealer—would be consistent with Rule 901(a)(2)(ii)(A).

under a security-based swap contract, it should also be willing to accept the responsibility of having to report that security-based swap to satisfy Regulation SBSR. In any event, the Commission believes that, if a guarantor's security-based swap activities are extensive enough that it must register as a security-based swap dealer or major security-based swap participant, it would have systems in place to ensure that it complies with the regulatory obligations attendant to such registration, including any reporting obligations for security-based swaps.

Finally, one commenter requested that the Commission provide guidance that reporting parties could follow when the reporting hierarchy instructs them to select the reporting side.[314] The Commission does not believe at this time that it is necessary or appropriate for the Commission itself to provide such guidance, because the determination of which counterparty is better positioned to report these security-based swaps is likely to depend on the facts and circumstances of the particular transaction and the nature of the counterparties. Rule 901(a)(2)(ii), as adopted, instructs the sides to select the reporting side only when the two sides are of equal status (*i.e.,* when both sides include a registered security-based swap dealer or when neither side includes a registered security-based swap dealer or registered major security-based swap participant). The Commission understands that, under existing industry conventions, market participants who act in a dealing capacity undertake the reporting function. Thus, the Commission believes that Rule 901(a)(2)(ii), as adopted, is not inconsistent with these current industry practices. Furthermore, the Commission would not be averse to the development and use of new or additional industry standards that create a default for which side would become the reporting side in case of a ''tie,'' provided that both sides agree to use such standards.

2. Reporting by Agents

In the Regulation SBSR Proposing Release, the Commission noted that Rule 901(a) would not prevent a reporting party from entering into an agreement with a third party to report a security-based swap on behalf of the reporting party.[315] Several commenters strongly supported the use of third-party agents to report security-based swaps.[316]

Four commenters addressed the types of entities that may wish to report security-based swaps on behalf of reporting parties. One commenter stated that platforms, clearing agencies, brokers, and stand-alone data reporting vendors potentially could provide reporting services to security-based swap counterparties.[317] Another commenter requested that the Commission clarify that a security-based swap counterparty that was not the reporting party under Rule 901(a) would be able to agree contractually to report a security-based swap on behalf of the reporting party under Rule 901(a).[318] A third commenter noted that many market participants will look to third-party service providers to streamline the reporting process.[319] One commenter, however, recommended that the Commission should consider limiting the use of third-party reporting service providers to SB SEFs or other reporting market intermediaries, such as exchanges, because allowing unregulated third parties with potentially limited experience could lead to incomplete or inaccurate security-based swap reporting.[320]

Although the Commission agrees that security-based swap transaction information must be reported in a timely and accurate manner to fulfill the transparency and oversight goals of Title VII, the Commission does not believe that it is necessary, at this time, to allow only regulated intermediaries to perform reporting services on behalf of a reporting side. The Commission believes that reporting sides have a strong incentive to ensure that agents who report on their behalf have the capability and dedication to perform this function. In this regard, the Commission notes that any reporting side who contracts with a third party, including the non-reporting side, to report a security-based swap transaction on its behalf would retain the obligation to ensure that the information is provided to a registered SDR in the manner and form required under Regulation SBSR. Thus, a reporting side could be held responsible if its agent reported a security-based swap transaction to a registered SDR late or inaccurately.

In addition, the Commission believes that allowing entities other than regulated intermediaries to provide reporting services to reporting persons could enhance competition and foster innovation in the market for post-trade processing services. This could, in turn, encourage more efficient reporting processes to develop over time as technology improves and the market gains experience with security-based swap transaction reporting. Accordingly, Rule 901(a), as adopted, does not limit the types of entities that may serve as reporting agents on behalf of reporting sides of security-based swaps. Furthermore, nothing in Rule 901(a), as adopted, prohibits the reporting side from using the non-reporting side to report as agent on its behalf.[321]

3. Reporting Clearing Transactions

In establishing proposed reporting obligations, Regulation SBSR, as proposed and as re-proposed, did not differentiate between cleared and uncleared security-based swaps. Accordingly, cleared and uncleared security-based swaps would have been treated in the same manner for purposes of reporting transactions to a registered SDR. Multiple commenters addressed the reporting of cleared and uncleared security-based swaps. Two commenters supported the Commission's proposal to assign reporting obligations for cleared security-based swaps through the reporting hierarchy in all circumstances.[322] These commenters noted that the Commission's proposal would allow security-based swap counterparties, rather than clearing agencies, to choose the registered SDR that receives data about their security-based swaps.[323] Other commenters objected to the proposal on statutory and operational grounds.[324] Two commenters argued that Title VII's security-based swap reporting provisions and Regulation SBSR should

[314] *See* Better Markets I at 10.

[315] *See* 75 FR 75211.

[316] *See* Barnard I at 2; DTCC II at 7; DTCC III at 13 (allowing third-party service providers to report security-based swaps would reduce the regulatory burden on counterparties and would assure prompt compliance with reporting obligations); ISDA/SIFMA I at 17 (noting that portions of the OTC derivatives market likely would rely on third-party agents to meet their reporting obligations); MarkitSERV I at 9; MarkitSERV II at 7–8; MarkitSERV III at 4–5.

[317] *See* ISDA/SIFMA I at 17 (explaining that there likely would be competition to provide reporting services and that market participants would be able to contract with appropriate vendors to obtain the most efficient allocation of reporting responsibilities).

[318] *See* SIFMA I at 2, note 3.

[319] *See* MarkitSERV IV at 3.

[320] *See* Tradeweb Letter at 4–5.

[321] *See* SIFMA I at 2, note 3.

[322] *See* DTCC VI at 8–9; MarkitSERV III at 4–5. *See also* DTCC VII *passim* (suggesting operational difficulties that could arise if a person who is not a counterparty to a security-based swap has the duty to report); DTCC VIII (noting that ''there has been a long held view that the SEC proposed model [for security-based swap data reporting] provides for a better defined process flow approach that achieves data quality, assigns proper ownership of who should report, and provides the most cost efficiencies for the industry as a whole'').

[323] *See* DTCC VI at 8–9; MarkitSERV III at 3–5.

[324] *See* CME/ICE Letter at 2–4; ICE Letter at 2–5; CME II at 4; ISDA IV at 5.

not extend to clearing transactions.[325] In the alternative, they argued that, if the Commission requires clearing transactions to be reported to a registered SDR, the clearing agency that clears a security-based swap should have the duty to report the associated clearing transactions to a registered SDR of its choice because, ''in contrast to uncleared [security-based swaps], the Clearing Agency is the sole party who holds the complete and accurate record of transactions and positions for cleared [security-based swaps] and in fact is the only entity capable of providing accurate and useful positional information on cleared [security-based swaps] for systemic risk monitoring purposes.''[326]

After careful consideration of the comments, the Commission has determined not to apply the reporting hierarchy in Rule 901(a)(2)(ii), as adopted, to clearing transactions.[327] In the Regulation SBSR Proposed Amendments Release, the Commission is proposing to revise Rule 901(a) to assign reporting duties for clearing transactions.[328] However, the reporting hierarchy in Rule 901(a)(2)(ii), as adopted, applies to alpha transactions that are not executed on a platform.[329]

One commenter expressed the view that reporting the alpha ''adds little or no value to an analysis of market exposure since it is immediately replaced by the beta and gamma and cannot exist unless the swap is cleared.'' [330] This commenter argued, therefore, that alpha transactions should not be reported to registered SDRs. The Commission disagrees with this comment, and believes instead that having a record of all alphas at registered SDRs will ensure that registered SDRs receive complete information about security-based swap transactions that are subject to the Title VII reporting requirement. This requirement is designed, in part, to provide valuable information about the types of counterparties active in the security-based swap market. Reconstructing this information from records of betas and gammas would be less efficient and potentially more prone to error than requiring reports of the alpha in the first instance. Furthermore, requiring reporting of the alpha transaction eliminates the need to address issues that would arise if there is a delay between the time of execution of the alpha and the time that it is submitted to clearing, or if the transaction is rejected by the clearing agency.

This commenter also stated that, if the alpha is reported, the ''key to improving data quality is to have a single party responsible for reporting a cleared transaction, and thus with respect to whether reporting for purposes of public dissemination and/or reporting to a [registered SDR], the clearing agency should be responsible for the alpha once it is accepted for clearing.'' [331] This commenter believed that this approach allows the data pertaining to the execution of the alpha to be more easily and accurately linked to the resulting beta and gamma.[332] The Commission also sees the importance in being able to link information about the alpha to a related beta and gamma. However, the Commission does not believe that relying solely on the clearing agency to report transaction information is the only or the more appropriate way to address this concern. As discussed in Section II(B)(3)(j), *supra,* the Commission is adopting in Rule 901(d)(10) a requirement that the reports of new security-based swaps (such as a beta and gamma) that result from the allocation, termination, novation, or assignment of one or more existing security-based swaps (such as an alpha) must include the transaction ID of the allocated, terminated, assigned, or novated security-based swap(s). This requirement is designed to allow the Commission and other relevant authorities to link related transactions across different registered SDRs.

4. Reporting by a Platform

Commenters expressed mixed views regarding reporting by platforms. Some commenters, addressing Rule 901(a) as originally proposed, recommended that the Commission require a platform to report security-based swaps executed on or through its facilities.[333] One of these commenters stated that a platform would be in the best position to ensure the accurate and timely reporting of a transaction executed on its facilities.[334] Another commenter expressed the view that having platforms report security-based swaps would facilitate economies in the marketplace by reducing the number of reporting entities.[335]

Four commenters, however, recommended that the Commission not impose reporting requirements on platforms.[336] Three of these commenters argued that certain practical considerations militate against assigning reporting duties to platforms.[337] Specifically, these commenters believed that a platform might not have all of the information required to be reported under Rules 901(c) and 901(d).[338] These commenters further noted that, even if a platform could report the execution of a security-based swap, it would lack information about life cycle events.[339] The third commenter stated that it could be less efficient for a platform to report than to have counterparties report.[340]

After careful consideration of the issues raised by the commenters, the Commission has determined not to apply the reporting hierarchy in Rule 901(a)(2)(ii), as adopted, to platform-executed transactions that will be submitted to clearing. In the Regulation SBSR Proposed Amendments Release, the Commission is proposing to assign reporting duties for platform-executed security-based swaps that will be

[325] *See* CME/ICE Letter at 2, 4; CME II at 4.

[326] CME/ICE Letter at 3–4. *See also* ICE Letter at 2–5 (arguing that a clearing agency would be well-positioned to issue a termination message for a swap that has been accepted for clearing and subsequently report the security-based swaps that result from clearing); DTCC X (arguing for allowing the reporting side to determine which SDR to report to for cleared security-based swaps); ISDA IV at 5 (expressing the view that ''the clearing agency is best-positioned to report cleared [security-based swaps] timely and accurately as an extension of the clearing process'').

[327] As stated above, a clearing transaction is a security-based swap that has a registered clearing agency as a direct counterparty.

[328] Rule 901(a), as adopted, reserves Rule 901(a)(2)(i) for assigning reporting obligations for clearing transactions.

[329] Reporting requirements for platform-executed alphas are discussed in Section V(C)(4), *infra,* and in the Regulation SBSR Proposed Amendments Release.

[330] ISDA IV at 6.

[331] *Id.*

[332] *Id.*

[333] *See* ICI I at 5; Tradeweb Letter at 3–4; Vanguard Letter at 2, 7.

[334] *See* Tradeweb Letter at 3. This commenter also stated that the counterparties to a transaction executed on a platform should be relieved of any reporting obligations because they would not be in a position to control or confirm the accuracy of the information reported or to control the timing of the platform's reporting. *See id.* at 3–4.

[335] *See* Vanguard Letter at 7.

[336] *See* ISDA/SIFMA I at 18; ISDA IV at 7; MarkitSERV III at 4; WMBAA II at 6.

[337] *See* ISDA/SIFMA I at 18; ISDA IV at 7; WMBAA II at 6.

[338] *See id.*

[339] *See* WMBAA II at 6 (observing that it would take a platform at least 30 minutes to gather and confirm the accuracy of all required information and recommending that the reporting party should be able to contract with a SB SEF to report a security-based swap on its behalf); ISDA/SIFMA I at 17–18 (noting that a platform may not know whether a security-based swap submitted for clearing had been accepted for clearing); ISDA IV at 7 (noting that certain aspects of the CFTC regime for reporting bilateral swaps executed on facility have been challenging due to the difficulty for SEFs to know and report certain trade data that is not essential to the trade execution, and because of the shared responsibility for reporting since the SEF/DCM is responsible for the initial creation data reporting and the SD/MSP is responsible for the continuation data reporting).

[340] *See* MarkitSERV III at 4.

submitted to clearing.[341] If the security-based swap will not be submitted to clearing, the platform would have no reporting obligation, and the reporting hierarchy in final Rule 901(a)(2)(ii) would apply.[342] The Commission notes that Section 13A(a)(3) of the Exchange Act provides that, for a security-based swap not accepted by any clearing agency, one of the counterparties must report the transaction. The reporting hierarchy of final Rule 901(a)(2)(ii) implements that provision and clarifies which side has the duty to report. The Commission believes that, in the case of security-based swaps that will not be submitted to clearing, the counterparties either will know each other's identity at the time of execution or the they will learn this information from the platform immediately or shortly after execution,[343] which will allow them to determine which side will incur the duty to report under Rule 901(a)(2)(ii), as adopted.

5. Reporting of a Security-Based Swap Resulting From a Life Cycle Event

Rule 901(e)(1)(i) requires the reporting side for a security-based swap to report a life cycle event of that security-based swap—such as a termination, novation, or assignment—to the registered SDR to which it reported the original transaction.[344] Certain life cycle events may result in the creation of a new security-based swap. The Commission is modifying Rule 901(a) to identify the reporting side for this new security-based swap.[345]

Rule 901(e), as adopted, identifies the reporting side for a life cycle event. Rule 901(e) does not, however, address who will be the reporting side for a new security-based swap that arises from a life cycle event (such as a termination) of an existing security-based swap.[346] To identify the reporting side for the new security-based swap, the Commission is modifying the introductory language of final Rule 901(a) to provide that a ''security-based swap, including a security-based swap that results from the allocation, termination, novation, or assignment of another security-based swap, shall be reported'' as provided in the rest of the rule.[347] This change responds to a commenter who suggested that reporting obligations be reassessed upon novation based on the current registration status of the remaining party and the new party to the security-based swap.[348] The reporting side designated by Rule 901(a) for the new transaction could be different from the reporting side for the original transaction.[349] The reporting side for the new security-based swap would be required to report the transaction within 24 hours of the time of creation of the new security-based swap.[350]

Rule 901(d)(10) requires the reporting side for the new security-based swap to report the transaction ID of the original security-based swap as a data element of the transaction report for the new security-based swap.[351] The Commission believes that this requirement will allow the Commission and other relevant authorities to link the report of a new security-based swap that arises from the allocation, termination, novation, or assignment of an existing security-based swap to the original security-based swap. As a result of these links, the Commission believes that it is not necessary or appropriate to require that a security-based swap that arises from the allocation, termination, novation, or assignment of an existing security-based swap be reported to the same registered SDR that received the transaction report of the original transaction. Thus, the reporting side for a security-based swap that arises as a result of the allocation, termination, novation, or assignment of an existing security-based swap could report the resulting new security-based swap to a registered SDR other than the registered SDR that received the report of the original security-based swap.

VI. Public Dissemination—Rule 902

A. Background

In addition to requiring regulatory reporting of all security-based swaps, Regulation SBSR seeks to implement Congress's mandate for real-time public dissemination of all security-based swaps. Section 13(m)(1)(B) of the Exchange Act authorizes the Commission ''to make security-based

[341] Rule 901(a), as adopted, reserves Rule 901(a)(1) for assigning reporting obligations for platform-executed security-based swaps that will be submitted to clearing.

[342] *See* ISDA IV at 7 (recommending that for a bilateral transaction executed on a platform that is not intended for clearing, one of the counterparties should be responsible for reporting, per the proposed reporting hierarchy).

[343] Market participants typically are unwilling to accept the credit risk of an unknown counterparty and therefore generally would not execute a security-based swap anonymously, unless the transaction would be cleared. Based on discussions with market participants, however, the Commission understands that certain temporarily registered CFTC SEFs offer ''work-up'' sessions that allow for anonymous execution of uncleared swaps in a limited circumstance. In a ''work-up'' session, after a trade is executed, other SEF participants may be given the opportunity to execute the same product at the same price. In a typical work-up session, the SEF would ''flash'' the execution to other SEF participants, who could then submit long or short interest to trade at the same price. The Commission understands that such interest could be submitted anonymously, and that a participant in a work-up session must agree to accept the credit risk of any other participant, if the work-up is conducted in a product that is not cleared. The Commission understands that the platform will inform each participant that executes a trade of the identity of its counterparty shortly after completion of the work-up session.

[344] However, a reporting side is not required to report whether or not a security-based swap has been accepted for clearing. *See infra* Section XII(A) (discussing life cycle event reporting).

[345] Security-based swaps resulting from an allocation are discussed in greater detail in Section VIII(A) *infra.*

[346] As re-proposed, paragraphs (1) and (2) of Rule 901(e) would have identified the reporting side for a security-based swap resulting from a life cycle event, if the reporting side for the initial security-based swap ceased to be a counterparty to the security-based swap resulting from the life cycle event. The Commission believes that these proposed provisions are unnecessary in light of the reporting hierarchy in Rule 901(a). Therefore, as described above, the Commission has determined that security-based swap counterparties should use the reporting hierarchy in Rule 901(a) to determine the reporting side for all security-based swaps, including security-based swaps that result from a life cycle event to another security-based swap.

[347] As proposed, this introductory language read ''[t]he reporting party shall be as follows.'' In the Cross-Border Proposing Release, the Commission proposed to modify this language to be ''[t]he reporting side for a security-based swap shall be as follows.''

[348] *See* ISDA IV at 7.

[349] Assume, for example, that a registered security-based swap dealer and a hedge fund execute a security-based swap. The execution does not occur on a platform and the transaction will not be submitted to clearing. Under Rule 901(a)(2)(ii)(B), as adopted, the registered security-based swap dealer is the reporting side for the transaction. Assume further that three days after execution the registered security-based swap dealer and the hedge fund agree that the registered security-based swap dealer will step out of the trade through a novation and will be replaced by a registered major security-based swap participant. Pursuant to Rule 901(e), as adopted, the registered security-based swap dealer would be required to report the novation to the same registered SDR that received the initial report of the security-based swap. At this point, the transaction between the registered security-based swap dealer and the hedge fund is complete and the registered security-based swap dealer would have no further reporting obligations with respect to the transaction. Under Rule 901(a)(2)(ii)(D), as adopted, the registered major security-based swap participant is the reporting side for the security-based swap that results from the novation of the transaction between the registered security-based swap dealer and the hedge fund. The registered major security-based swap participant is the reporting side for the resulting transaction.

[350] If the time that is 24 hours after the time of the creation of the new security-based swap would fall on a day that is not a business day, the report of the new security-based swap would be due by the same time on the next day that is a business day. *See* Rule 901(j).

[351] Rule 901(d)(10) provides that if a ''security-based swap arises from the allocation, termination, novation, or assignment of one or more existing security-based swaps,'' the reporting side must report ''the transaction ID of the allocated, terminated, assigned, or novated security-based swap(s), except in the case of a clearing transaction that results from the netting or compression of other clearing transactions.'' *See supra* Section II(C)(3)(k) (discussing Rule 901(d))(10)).

swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.'' [352] Section 13(m)(1)(C) of the Exchange Act [353] authorizes the Commission to provide by rule for the public availability of security-based swap transaction, volume, and pricing data as follows:

(1) With respect to those security-based swaps that are subject to the mandatory clearing requirement described in Section 3C(a)(1) of the Exchange Act (including those security-based swaps that are excepted from the requirement pursuant to Section 3C(g) of the Exchange Act),[354] the Commission shall require real-time public reporting for such transactions; [355]

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

(3) With respect to security-based swaps that are not cleared at a registered clearing agency and which are reported to a SDR or the Commission under Section 3C(a)(6),[356] the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person; and

(4) With respect to security-based swaps that are determined to be required to be cleared under Section 3C(b) of the Exchange Act but are not cleared, the Commission shall require real-time public reporting for such transactions.[357]

Furthermore, Section 13(m)(1)(D) of the Exchange Act [358] authorizes the Commission to require registered entities (such as registered SDRs) to publicly disseminate the security-based swap transaction and pricing data required to be reported under Section 13(m) of the Exchange Act. Finally, Section 13(n)(5)(D)(ii) of the Exchange Act [359] requires SDRs to provide security-based swap information ''in such form and at such frequency as the Commission may require to comply with public reporting requirements.''

In view of these statutory provisions, the Commission proposed Rule 902—Public Dissemination of Transaction Reports. In the Regulation SBSR Proposing Release, the Commission expressed its belief that the best approach would be to require market participants to report transaction information to a registered SDR and require registered SDRs to disseminate that information to the public.[360] Many commenters expressed general support for public dissemination of security-based swap information.[361] In addition, as discussed more fully below, the Commission received a large number of comments addressing specific aspects of public dissemination of transaction reports.[362]

The current market for security-based swaps is opaque. Dealers know about order flow that they execute, and may know about other dealers' transactions in certain instances, but information about executed transactions is not widespread. Market participants—particularly non-dealers—have to rely primarily on their understanding of the market's fundamentals to arrive at a price at which they would be willing to assume risk. The Commission believes that, by reducing information asymmetries between dealers and non-dealers and providing more equal access to all post-trade information in the security-based swap market, post-trade transparency could help reduce implicit transaction costs and promote greater price efficiency.[363] The availability of post-trade information also could encourage existing market participants to increase their activity in the market and encourage new participants to join the market—and, if so, increase liquidity and competition in the security-based swap market. In addition, all market participants will have more comprehensive information with which to make trading and valuation determinations.

Security-based swaps are complex derivative products, and there is no single accepted way to model a security-based swap for pricing purposes. The Commission believes that post-trade pricing and volume information will allow valuation models to be adjusted to reflect how other market participants have valued a security-based swap product at a specific moment in time. Public dissemination of last-sale

[352] 15 U.S.C. 78m(m)(1)(B). Section 13m(1)(E) of the Exchange Act, 15 U.S.C. 78m(m)(1)(E), requires the Commission rule for real-time public dissemination of security-based swap transactions to: (1) ''specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts'' and (2) ''specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public.'' The treatment of block trades is discussed in Section VII, *infra.*

[353] 15 U.S.C. 78m(m)(1)(C).

[354] 15 U.S.C. 78c–3(g).

[355] Section 3C(a)(1) of the Exchange Act, 15 U.S.C. 78c–3(a)(1), provides that it shall be unlawful for any person to engage in a security-based swap unless that person submits such security-based swap for clearing to a clearing agency that is registered under the Exchange Act or a clearing agency that is exempt from registration under the Exchange Act if the security-based swap is required to be cleared. Section 3C(g)(1) of the Exchange Act, 15 U.S.C. 78c–3(g)(1), provides that requirements of Section 3C(a)(1) will not apply to a security-based swap if one of the counterparties to the security-based swap (1) is not a financial entity; (2) is using security-based swaps to hedge or mitigate commercial risk; and (3) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared security-based swaps.

[356] The reference in Section 13(m)(1)(C)(iii) of the Exchange Act to Section 3C(a)(6) of the Exchange Act is incorrect. Section 3C of the Exchange Act does not contain a paragraph (a)(6). *See generally Am. Petroleum Institute* v. *SEC,* 714 F.3d 1329, 1336–37 (DC Cir 2013) (explaining that ''[t]he Dodd Frank Act is an enormous and complex statute, and it contains'' a number of ''scriveners' errors'').

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

[358] 15 U.S.C. 78m(m)(1)(D).

[359] 15 U.S.C. 78m(n)(5)(D)(ii).

[360] *See* 75 FR 75227.

[361] *See* Barnard I at 3 (recommending full post-trade transparency as soon as technologically and practically feasible, with an exemption to permit delayed reporting of block trades); CII Letter at 2 (''the transparency resulting from the implementation of the proposed rules would not only lower systemic risk and strengthen regulatory oversight, but also, importantly for investors, enhance the price discovery function of the derivatives market''); DTCC II at 17–18 (noting that the proposed rules are designed to balance the benefits of post-trade transparency against the potentially higher costs of transferring or hedging a position following the dissemination of a report of a block trade); Ethics Metrics Letter at 3 (last-sale reporting of security-based swap transactions will ''provide material information to eliminate inefficiencies in pricing [financial holding company] debt and equity in the U.S. capital markets''); FINRA Letter at 1 (stating that the proposed trade reporting and dissemination structure, and the information it would provide to regulators and market participants, are vital to maintaining market integrity and investor protection); Getco Letter at 3 (noting that in the absence of accurate and timely post-trade transparency for most security-based swap transactions only major dealers will have pricing information and therefore new liquidity providers will not participate in the security-based swap market); ICI I at 1–2 (stating that market transparency is a key element in assuring the integrity and quality of the security-based swap market); Markit I at 4 (stating that security-based swap data should be made available on a non-delay basis to the public, media, and data vendors); MFA I at 1 (supporting the reporting of security-based swap transaction data to serve the goal of market transparency); SDMA I at 4 (''Post-trade transparency is not only a stated goal of the Dodd-Frank Act it is also an instrumental component in establishing market integrity. By creating real time access to trade information for all market participants, confidence in markets increases and this transparency fosters greater liquidity''); ThinkNum Letter *passim;* Shatto Letter *passim.*

[362] *See infra* notes 377 to 386 and accompanying text and Section VI(D).

[363] *See infra* Section XXII(C)(2)(a). *See also infra* note 1255 (discussing implicit transaction costs).

information also will aid dealers in deriving better quotations, because they will know the prices at which other market participants have traded. Last-sale information also will aid end users and other non-registered entities in evaluating current quotations by allowing them to request additional information if a dealer's quote differs from the prices of the most recent transactions. Furthermore, smaller market participants that view last-sale information will be able to test whether quotations offered by dealers before the last sale were close to the price at which the last sale was executed. In this manner, post-trade transparency will promote price competition and more efficient price discovery in the security-based swap market.

The Commission is adopting Rule 902 with certain modifications and technical changes discussed in more detail below. Final Rule 902(a) sets forth the basic duty of a registered SDR to publicly disseminate transaction reports. Final Rule 902(c) sets forth certain types of security-based swaps and certain other information about security-based swaps that a registered SDR shall not publicly disseminate. Final Rule 902(d), the so-called ''Embargo Rule,'' is designed to promote fair access to information about executed security-based swaps.[364]

Rule 902(b), as proposed and re-proposed, would have established a mechanism for registered SDRs to publicly disseminate transaction reports of block trades. As discussed in more detail in Section VII, *infra,* the Commission is not adopting thresholds for determining what constitutes a block trade. Accordingly, the Commission believes that it is not necessary or appropriate at this time to adopt rules specifically addressing the public dissemination of block trades.

B. Registered SDR's Duty To Disseminate—Rule 902(a)

Rule 902(a), as proposed and re-proposed, would have required a registered SDR to publicly disseminate a transaction report of any security-based swap immediately upon receipt of transaction information about the security-based swap, except in the case of a block trade.[365] Further, Rule 902(a), as initially proposed, provided that the transaction report would consist of ''all the information reported by the reporting party pursuant to § 242.901, plus any indicator or indicators contemplated by the registered security-based swap data repository's policies and procedures that are required by § 242.907.'' Rule 902(a) was revised and re-proposed as part of the Cross-Border Proposing Release to add that a registered SDR would not have an obligation to publicly disseminate certain types of cross-border security-based swaps that are required to be reported but not publicly disseminated.[366]

Commenters generally were supportive of the Commission's approach of requiring registered SDRs to be responsible for public dissemination of security-based swap transaction reports.[367] One commenter, for example, stated that allowing other types of entities to have the regulatory duty to disseminate data could lead to undue complications for market participants.[368] In addition, the commenter expressed the view that real-time public dissemination of security-based swap data is a ''core function'' of registered SDRs, and that permitting only registered SDRs to publicly disseminate security-based swap data would help to assure the accuracy and completeness of the data.[369] However, one commenter appeared to recommend that a clearing agency should be responsible for public dissemination of ''relevant pricing data for a security-based swap subject to clearing.''[370]

The Commission has carefully analyzed the comments and is adopting the approach of requiring public dissemination through registered SDRs. The Commission believes that this approach will promote efficiency in the security-based swap market, or at least limit inefficiency.[371] Section 13(m)(1)(G) of the Exchange Act[372] provides that ''[e]ach security-based swap (whether cleared or uncleared) shall be reported to a registered security-based swap data repository.'' Thus, security-based swaps would have to be reported to registered SDRs regardless of the mechanism that the Commission chooses for public dissemination. By requiring registered SDRs to carry out the task of public dissemination, the Commission will not require reporting steps beyond those already required by the Exchange Act. Furthermore, the Commission believes that assigning registered SDRs the duty to publicly disseminate will help promote efficiency and consistency of post-trade information. Market observers will not have to obtain market data from potentially several other sources—such as SB SEFs, clearing agencies, or the counterparties themselves—to have a full view of security-based swap market activity.

1. Format of Disseminated Data

In the Regulation SBSR Proposing Release, the Commission acknowledged that multiple uniquely formatted data feeds could impair the ability of market participants to receive, understand, or compare security-based swap transaction data and thus undermine its value.[373] Furthermore, the Commission suggested that one way to address that issue would be to dictate the exact format and mode of providing required security-based swap data to the public, while acknowledging various problems with that approach.[374] The Commission proposed, however, to identify in proposed Rules 901(c) and 901(d) the categories of information that would be required to be reported, and to require registered SDRs to establish and maintain policies and procedures that, among other things, would specify the data elements that would be required to be reported.[375] The Commission preliminarily believed that this approach would promote the reporting of uniform, material information for each security-based swap, while providing flexibility to account for

[364] Final Rule 902(d) provides that ''[n]o person shall make available to one or more persons (other than a counterparty or post-trade processor) transaction information relating to a security-based swap before the primary trade information about the security-based swap is submitted to a registered security-based swap data repository.''

[365] The Commission recognized, however, that there may be circumstances when a registered SDR's systems might be unavailable for publicly disseminating transaction data. In such cases, proposed Rule 902(a) would have required a registered SDR to disseminate the transaction data immediately upon its re-opening. *See* Regulation SBSR Proposing Release, 75 FR 75228. Rule 904 of Regulation SBSR deals with hours of operation of registered SDRs and related operational procedures. *See infra* Section XI.

[366] This carve-out was necessitated by re-proposed Rule 908(a), which contemplated situations where a security-based swap would be required to be reported to a registered SDR but not publicly disseminated. *See* 78 FR 31060.

[367] *See* FINRA Letter at 5; DTCC II at 18 (stating that SDRs should be able to disseminate data effectively and should be the sole source of data dissemination); DTCC IV at 4; MarkitSERV I at 7–8 (stating that only registered SDRs, or their agents, should be permitted to disseminate security-based swap data); Thomson Reuters Letter at 6–7 (stating that publication and dissemination of security-based swap transaction information should be the responsibility of registered SDRs rather than SB SEFs).

[368] *See* DTCC II at 18.

[369] *See* DTCC IV at 4.

[370] *See* ISDA IV at 6 (stating that ''as regards public dissemination of relevant pricing data for a SBS subject to clearing, such reporting should be done by the clearing agency when a SBS is accepted for clearing and the clearing agency reports for the beta and gamma'').

[371] *See infra* Section XXII(B)(2).

[372] 15 U.S.C. 78m(m)(1)(G).

[373] *See* 75 FR 75227.

[374] *See id.*

[375] *See id.* at 75213.

changes to the security-based swap market over time.[376]

Two commenters generally supported the Commission's approach of providing registered SDRs with the flexibility to define the relevant data fields.[377] However, one commenter stated that the final rules should clearly identify the data fields that will be publicly disseminated.[378] Another commenter emphasized the importance of presenting security-based swap information in a format that is useful for market participants, and expressed concern that proposed Regulation SBSR did ''nothing to ensure that the data amassed by individual SDRs is aggregated and disseminated in a form that is genuinely useful to traders and regulators and on a nondiscriminatory basis.'' [379] This commenter further believed that to provide meaningful price discovery, data must be presented in a format that allows market participants to view it in near-real time, fits onto the limited space available on their trading screens, and allows them to view multiple markets simultaneously.[380]

The Commission has carefully considered these comments and continues to believe that it is not necessary or appropriate at this time for the Commission to dictate the format and mode of public dissemination of security-based swap transaction information by registered SDRs. Therefore, Rule 902(a), as adopted, provides registered SDRs with the flexibility to set the format and mode of dissemination through its policies and procedures, as long as the reports of security-based swaps that it publicly disseminates include the information required to be reported by Rule 901(c), plus any ''condition flags'' contemplated by the registered SDR's policies and procedures under Rule 907.[381] The Commission notes that it anticipates proposing for public comment detailed specifications of acceptable formats and taxonomies that would facilitate an accurate interpretation, aggregation, and analysis by the Commission of security-based swap data submitted to it by an SDR. The Commission intends to maximize the use of any applicable current industry standards for the description of security-based swap data, and build upon such standards to accommodate any additional data fields as may be required.

2. Timing of Public Dissemination

Rule 902(a), as re-proposed, would have required a registered SDR to publicly disseminate a transaction report of a security-based swap immediately upon (1) receipt of information about the security-based swap from a reporting side, or (2) re-opening following a period when the registered SDR was closed, unless the security-based swap was a block trade or a cross-border security-based swap that was required to be reported but not publicly disseminated. One commenter agreed with the proposed requirement, stating that reported security-based swap transaction information ''should be made available on a non-delayed basis to the public, media, and data vendors.'' [382]

The Commission is adopting the requirement contained in Rule 902(a), as re-proposed, that a registered SDR must disseminate a transaction report of a security-based swap ''immediately upon receipt of information about the security-based swap, or upon re-opening following a period when the registered security-based swap data repository was closed.'' [383] ''Immediately,'' as used in this context, implies a wholly automated process to accept the incoming information, process the information to assure that only information required to be disseminated is disseminated, and disseminate a trade report through electronic means.

3. Dissemination of Life Cycle Events

Rule 902(a), as adopted, provides that, in addition to transaction reports of security-based swaps, a registered SDR ''shall publicly disseminate . . . a life cycle event or adjustment due to a life cycle event.'' Rule 902(a), as proposed and re-proposed, did not specifically refer to such information, but, as noted in the Regulation SBSR Proposing Release, proposed Rule 907(a)(4) would have required a registered SDR to ''establish and maintain written policies and procedures describing how reporting parties shall report—and, consistent with the enhancement of price discovery, how the registered SDR shall publicly disseminate—reports of, and adjustments due to, life cycle events.'' [384] One commenter argued that the Commission should limit public dissemination to new trading activity and should exclude maintenance or life cycle events.[385] The Commission disagrees, and believes instead that, if information about a security-based swap is publicly disseminated but subsequently one or more of the disseminated data elements is revised due to a life cycle event (or an adjustment due to a life cycle event), the revised information would provide market observers a more accurate understanding of the market. The Commission, therefore, is clarifying Rule 902(a) to make clear the requirement to disseminate life cycle events. Final Rule 902(a) provides, in relevant part, that a registered SDR ''shall publicly disseminate a transaction report of the security-based swap or a life cycle event or adjustment due to a life cycle event immediately upon receipt.'' [386]

4. Correction of Minor Drafting Error

Rule 902(a), as initially proposed and re-proposed, provided that the transaction report that is publicly disseminated ''shall consist of all the information reported pursuant to *Rule 901,* plus any indicator or indicators contemplated by the registered security-based swap data repository's policies and procedures that are required by Rule 907'' (emphasis added). However, in the Regulation SBSR Proposing Release, the Commission specified that the transaction report that is disseminated should consist of all the information reported pursuant to *Rule*

[376] *See id.*

[377] *See* Barnard I at 2 (stating that the categories of information required to be reported under the proposed rules should be ''complete and sufficient so that its dissemination will enhance transparency and price discovery''); MarkitSERV I at 10 (expressing support for the Commission's ''proposal to provide [registered] SDRs with the authority to define the relevant fields on the basis of general guidelines as set out by the SEC'').

[378] *See* ISDA/SIFMA I at 10. *See also* ISDA IV at 9 and Section II(2)(a), *supra,* for a response.

[379] Better Markets II at 2–3 (also arguing that the Commission should require disclosure of the component parts of a complex transaction to prevent market participants from avoiding transparency by creating complex composite transactions).

[380] *See* Better Markets I at 3; Better Markets II at 4.

[381] The Commission notes that final Rule 902(a) references ''condition flags,'' rather than ''indicator or indicators,'' as was proposed, to conform with Rule 907, as adopted.

[382] Markit I at 4.

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

[384] Regulation SBSR Proposing Release, 75 FR 75237.

[385] *See* ISDA/SIFMA I at 12. *See also* ISDA IV at 13 (arguing that only life cycle events that result in a change to the price of a security-based swap should be subject to public dissemination, and requesting that ''any activity on a [security-based swap] that does not affect the price of the reportable [security-based swap]'' be excluded from public dissemination).

[386] To enhance the usefulness of a public transaction report of a life cycle event, final Rule 907(a)(3) requires a registered SDR to have policies and procedures for appropriately flagging public reports of life cycle events. *See infra* Section XII(C). This requirement is designed to promote transparency by allowing market observers to distinguish original transactions from life cycle events.

901(c).[387] The statement from the preamble of the Regulation SBSR Proposing Release is correct. The Commission did not intend for all of the information reported pursuant to Rule 901 to be publicly disseminated;[388] this would include, for example, regulatory data reported pursuant to Rule 901(d) and information about historical security-based swaps reported pursuant to Rule 901(i). The Commission is correcting this drafting error so that final Rule 902(a) explicitly states that the ''transaction report shall consist of all the information reported pursuant to § *242.901(c),* plus any condition flags contemplated by the registered security-based swap data repository's policies and procedures that are required by § 242.907'' (emphasis added).

5. Use of Agents by a Registered SDR To Carry Out the Public Dissemination Function

One commenter discussed the appropriateness of third-party service providers carrying out the public dissemination function on behalf of registered SDRs.[389] The Commission believes that, in the same way that reporting sides may engage third-party agents to report transactions on their behalf, registered SDRs may engage third-party providers to carry out the public dissemination function on their behalf. In both cases, the entity with the legal duty would remain responsible for compliance with Regulation SBSR if its agent failed to carry out the function in a manner stipulated by Regulation SBSR. Thus, reporting sides and registered SDRs should engage only providers that have the capacity and reliability to carry out those duties.

C. Definition of ''Publicly Disseminate''

In the Regulation SBSR Proposing Release, the Commission defined ''publicly disseminate'' in Rule 900 to mean ''to make available through the Internet or other electronic data feed that is widely accessible and in machine-readable electronic format.'' The Commission re-proposed this definition renumbering it Rule 900(y), in the Cross-Border Proposing Release.

The Commission received no comment letters directly discussing the proposed definition, although as noted above many commenters commented on various other aspects of public dissemination, including the format of disseminated data [390] and timing of public dissemination.[391] The Commission is adopting the definition of ''publicly disseminate'' as proposed and re-proposed. The Commission continues to believe that, to satisfy the statutory mandate for public dissemination, security-based swap transaction data must be widely accessible in a machine-readable electronic format. These data are too numerous and complex for direct human consumption and thus will have practical use only if they can be downloaded and read by computers. The definition of ''publicly disseminate'' recognizes the Internet as one, but not the only, possible electronic medium to make these data available to the public.

D. Exclusions From Public Dissemination—Rule 902(c)

1. Discussion of Final Rule

Rule 902(c), as proposed and re-proposed, set forth three kinds of information that a registered SDR would be prohibited from disseminating. First, in Rule 902(c)(1), the Commission proposed that a registered SDR would be prohibited from disseminating the identity of any counterparty to a security-based swap. This would implement Section 13(m)(1)(E)(i) of the Exchange Act,[392] which requires the Commission's rule providing for the public dissemination of security-based swap transaction and pricing information to ensure that ''such information does not identify the participants.'' The Commission received three comments that generally urged the Commission to ensure the anonymity of security-based swap counterparties, either through non-dissemination of the identity of any counterparty or by limiting public dissemination of other data elements they believed could lead to disclosure of counterparties' identities.[393] To address the commenters' concerns, the Commission is adopting Rule 902(c)(1) as proposed and re-proposed, with one conforming change.[394] Final Rule 902(c)(1) explicitly prohibits a registered SDR from disseminating the identity of any counterparty. Further, Rule 902(a) explicitly provides for the public dissemination of a transaction report that consists only of ''the information reported pursuant to § 242.901(c), plus any condition flags contemplated by the registered security-based swap data repository's policies and procedures that are required by § 242.907.'' Limiting the publicly disseminated trade report to these specific data elements is designed to further avoid disclosure of any counterparty's identity, including the counterparty ID of a counterparty, even in thinly-traded markets.[395]

Second, the Commission proposed in Rule 902(c)(2) that, with respect to a security-based swap that is not cleared at a clearing agency and that is reported to a registered SDR, a registered SDR would be prohibited from disseminating any information disclosing the business transactions and market positions of any person. This would implement Section 13(m)(1)(C)(iii) of the Exchange Act,[396] which provides that, with respect to the security-based swaps that are not cleared and which are reported to an SDR or the Commission, ''the Commission shall require real-time public reporting . . . in a manner that does not disclose the business transactions and market positions of any person.'' The Commission received no comments that directly addressed proposed Rule 902(c)(2), although one commenter noted that ''all market participants have legitimate interests in the protection of their confidential and identifying financial information.'' [397] By prohibiting a registered SDR from disseminating any information disclosing the business transactions and market positions of any person, the Commission believes that Rule 902(c)(2) will help preserve the confidential information of market participants, in

[387] *See* 75 FR 75212–13.

[388] Two comments specifically noted this lack of clarity. *See* ISDA/SIFMA I at 12; ISDA IV at 14.

[389] *See* MarkitSERV I at 7–8.

[390] *See supra* Section VII(B)(1).

[391] *See supra* Section VII(B)(2).

[392] 15 U.S.C. 13m(m)(1)(E)(i). This section is applicable to security-based swaps that are subject to Sections 13(m)(1)(C)(i) and (ii) of the Exchange Act—*i.e.,* security-based swaps that are subject to the mandatory clearing requirement in Section 3C(a)(1) and security-based swaps that are not subject to the mandatory clearing requirement in Section 3C(a)(1) but are cleared.

[393] *See* Deutsche Bank Letter at 6 (asking the SEC and CFTC to impose strict requirements on an SDR's handling, disclosure, and use of identifying information); DTCC II at 9 (noting that trading volume in most single name credit derivatives is ''extremely thin'' and disclosing small data samples, particularly from narrow time periods, may not preserve the anonymity of the trading parties); ISDA/SIFMA I at 12; MFA I at 2 (arguing that participant IDs should not be included in any publicly disseminated transaction report to protect identities and proprietary trading strategies of security-based swap market participants).

[394] Re-proposed Rule 902(c)(1) would have prohibited a registered SDR from publicly disseminating the identity of either counterparty to a security-based swap. Final Rule 902(c)(1) prohibits a registered SDR from publicly disseminating the identity of *any* counterparty to a security-based swap. Final Rule 900(i) defines counterparty to mean ''a person that is a direct counterparty or indirect counterparty of a security-based swap.'' This conforming change to Rule 902(c)(1) makes clear that a registered SDR may not publicly disseminate the identity of any counterparty—direct or indirect—of a security-based swap.

[395] *See infra* Section VI(D)(1)(f) (discussing public dissemination of thinly-traded products).

[396] 15 U.S.C. 13(m)(1)(C)(iii).

[397] Deutsche Bank Letter at 6.

addition to implementing Section 13(m)(1)(C)(iii) of the Exchange Act. Accordingly, the Commission is adopting Rule 902(c)(2) as proposed and re-proposed.

Third, the Commission preliminarily believed that it would be impractical and unnecessary for a registered SDR to publicly disseminate reports of historical security-based swaps reported pursuant to Rule 901(i), and therefore included this exclusion in proposed Rule 902(c)(3).[398] The Commission received no comments regarding proposed Rule 902(c)(3). The Commission continues to believe that it would be impractical for a registered SDR to publicly disseminate reports of historical security-based swaps reported pursuant to Rule 901(i). Accordingly, the Commission is adopting Rule 902(c)(3) as proposed and re-proposed.

The Commission calls particular attention to the relationship between Rules 901(i), 901(e), and 902. Rule 901(i) requires reporting of historical security-based swaps to a registered SDR. Rule 902(c)(3) provides that the initial transaction reported pursuant to Rule 901(i) shall not be publicly disseminated. A historical security-based swap might remain open after market participants are required to begin complying with the requirement in Rule 901(e) to report life cycle events.[399] If a life cycle event of a historical security-based swap relating to any of the primary trade information—*i.e.,* the data elements enumerated in Rule 901(c)—occurs after public dissemination is required for security-based swaps in a particular asset class, Rule 902(a) would require the registered SDR to publicly disseminate a report of that life cycle event, plus any condition flags required by the registered SDR's policies and procedures under Rule 907. In other words, Rule 902(c)(3)'s exclusion from public dissemination for historical security-based swaps applies only to the initial transaction, not to any life cycle event of that historical security-based swap relating to the primary trade information that occurs after public dissemination in that asset class is required. Therefore, life cycle events relating to the primary trade information of historical security-based swaps must, after the public dissemination requirement goes into effect, be publicly disseminated.[400]

At the same time, correcting an error in the Rule 901(c) information relating to a historical security-based swap would *not* trigger public dissemination of a corrected report. Rule 905 applies to all information reported pursuant to Regulation SBSR, including historical security-based swaps that must be reported pursuant to Rule 901(i). Rule 905(b)(2) requires the registered SDR to publicly disseminate a correction of a transaction only if the corrected information falls within Rule 901(c) and the transaction previously was subject to a public dissemination requirement. Historical security-based swaps are not subject to the public dissemination requirement; therefore, corrections to Rule 901(c) information in historical security-based swaps are not subject to public dissemination either.

Rule 902(a), as proposed, would have provided that a registered SDR shall publicly disseminate a transaction report of a security-based swap reported to it, ''[e]xcept in the case of a block trade.'' Rule 902(a), as re-proposed, would have retained the exception for block trades and added a second exception, for ''a trade that is required to be reported but not publicly disseminated.''[401] In final Regulation SBSR, the Commission is revising Rules 902(a) and 902(c) to consolidate into a single rule—Rule 902(c)—all the types of security-based swaps and the kinds of information that a registered SDR is prohibited from disseminating. Therefore, Rule 902(a), as adopted, now provides that a registered SDR shall publicly disseminate a transaction report of a security-based swap ''except as provided in paragraph (c) of this section.''

In addition to adopting subparagraphs (1), (2), and (3) of Rule 902(c), as proposed and re-proposed, the Commission is modifying Rule 902(c) to expand the number of exclusions from public dissemination from three to seven. First, the Commission is adding Rule 902(c)(4), which prohibits a registered SDR from disseminating a non-mandatory report, and is adding a new Rule 900(r) to define ''non-mandatory report'' as any information provided to a registered SDR by or on behalf of a counterparty other than as required by Regulation SBSR. Situations may arise when the same transaction may be reported to two separate registered SDRs. This could happen, for example, if the reporting side reports a transaction to one registered SDR, as required by Rule 901, but the other side elects to submit the same transaction information to a second registered SDR. The Commission has determined that any non-mandatory report should be excluded from public dissemination because the mandatory report of that transaction will have already been disseminated, and the Commission seeks to avoid distorting the market by having two public reports issued for the same transaction.[402]

Second, the Commission is adding Rule 902(c)(5), which prohibits a registered SDR from disseminating any information regarding a security-based swap that is subject to regulatory reporting but not public dissemination under final Rule 908(a) of Regulation SBSR.[403] Rule 902(a), as re-proposed, would have prohibited a registered SDR from publicly disseminating information concerning a cross-border security-based swap that is required to be reported but not publicly disseminated. The Commission received no comments on this specific provision, and is relocating it from re-proposed Rule 902(a) to final Rule 902(c)(5). Rule 902(c)(5), as adopted, will prohibit a registered SDR from disseminating ''[a]ny information regarding a security-based swap that is required to be reported pursuant to §§ 242.901 and 242.908(a)(1) but is not required to be publicly disseminated pursuant to § 242.908(a)(2).''

Third, the Commission is adding Rule 902(c)(6), which prohibits a registered SDR from disseminating any information regarding certain types of clearing transactions.[404] Regulation SBSR, as proposed and re-proposed, did not provide any exemption from public dissemination for clearing transactions. However, the Commission has determined that publicly disseminating reports of clearing transactions that arise from the acceptance of a security-based swap for clearing by a registered clearing agency or that result from netting other clearing transactions would be unlikely to further Title VII's transparency objectives. Any security-based swap transaction, such as an

[398] 75 FR 75286.

[399] *See* Regulation SBSR Proposed Amendments Release, Section VII (proposing a new compliance schedule for Regulation SBSR).

[400] For example, a termination of a historical security-based swap—occurring after public dissemination in that asset class becomes required—would have to be publicly disseminated. A termination represents the change in the notional amount of the transaction from a positive amount to zero. Because the notional amount is a Rule 901(c) element, the termination of the historical security-based swap would have to be publicly disseminated.

[401] This second exception was necessitated by revisions to Rule 908 made in the Cross-Border Proposing Release that would have provided that certain cross-border security-based swaps would be subject to regulatory reporting but not public dissemination. *See* 78 FR 31215.

[402] *See infra* Section XIX (explaining how a registered SDR can determine whether the report it receives is a non-mandatory report).

[403] *See infra* Section XV(A).

[404] Rule 900(f) defines ''clearing transaction'' as ''a security-based swap that has a registered clearing agency as a direct counterparty.''

alpha, that precedes a clearing transaction must be publicly disseminated. Clearing transactions, such as the beta and the gamma, that result from clearing a security-based swap or from netting clearing transactions together do not have price discovery value because they are mechanical steps taken pursuant to the rules of the clearing agency. Therefore, the Commission believes that non-dissemination of these clearing transactions is appropriate in the public interest and consistent with the protection of investors.

Fourth, the Commission is adding Rule 902(c)(7), which prohibits a registered SDR from disseminating any information regarding the allocation of a security-based swap. As discussed in more detail in Section VIII, *infra,* the Commission has determined that, to comply with this prohibition, a registered SDR will satisfy its public dissemination obligations for a security-based swap involving allocation by disseminating only the aggregate notional amount of the executed bunched order that is subsequently allocated. The Commission believes that this is an appropriate means of public dissemination, because the price and size of the executed bunched order were negotiated as if the transaction were a single large trade, rather than as individual smaller trades. In the Commission's view, public dissemination of the allocations would not enhance price discovery because the allocations are not individually negotiated.[405] Furthermore, although the Commission has taken the approach in other situations of requiring public dissemination of the transaction but with a condition flag to explain the special circumstances related to the transaction,[406] for the reasons stated above, the Commission does not believe that this approach is appropriate here. Rule 902(c)(7)'s exception to public dissemination for the individual allocations also is designed to address commenter concerns that publicly disseminating the sizes of individual allocations could reveal the identities or business strategies of fund groups that execute trades on behalf of multiple client funds.[407] For similar reasons, Rule 902(c)(7), as adopted, prohibits a registered SDR from publicly disseminating the fact that an initial security-based swap has been terminated and replaced with several smaller security-based swaps as part of the allocation process.[408] The Commission believes that any marginal benefit of publicly disseminating this type of termination event would not be justified by the potential risk to the identity or business strategies of fund groups that execute trades on behalf of multiple client funds.[409]

Registered SDRs will need to rely on the information provided by reporting sides to determine whether Rule 902(c) excludes a particular report from public dissemination. As described in more detail in Section VI(G), Rule 907(a)(4)(iv) requires a registered SDR, among other things, to establish and maintain written policies and procedures directing its participants to apply to the transaction report a condition flag designated by the registered SDR to indicate when the report of a transaction covered by Rule 902(c) should not be publicly disseminated.[410] A registered SDR would not be liable for a violation of Rule 902(c) if it disseminated a report of a transaction that fell within Rule 902(c) if the reporting side for that transaction failed to appropriately flag the transaction as required by Rule 907(a)(4).

2. Other Exclusions From Public Dissemination Sought by Commenters

Several commenters advanced arguments against public dissemination of various types of security-based swaps. The Commission notes at the outset that the statutory provisions that require public dissemination of security-based swap transactions state that all security-based swaps shall be publicly disseminated.

a. Customized Security-Based Swaps

Several commenters expressed the view that transaction information regarding customized security-based swaps should not be publicly disseminated because doing so would not enhance price discovery, would be of limited use to the public, or could be confusing or misleading to market observers.[411] However, one commenter urged the Commission to require public dissemination of all of the information necessary to calculate the price of a customized security-based swap.[412]

Section 13(m)(1)(C) of the Exchange Act[413] authorizes the Commission to provide by rule for the public availability of security-based swap transaction, volume, and pricing data for four types of security-based swaps, which together comprise the complete universe of potential security-based swaps. With respect to ''security-based swaps that are not cleared at a registered clearing agency and which are reported to a security-based swap data repository''—which category would include customized or bespoke security-

[405] The size in which a transaction is executed could significantly affect the price of the security-based swap. Thus, all other things being equal, the price negotiated for a large trade could be significantly different from the price negotiated for a small trade. Publicly disseminating the prices of small trades that are allocated from the bunched order execution might not provide any price discovery value for another small trade if it were to be negotiated individually. Nor does the Commission believe that publicly disseminating the prices and sizes of the allocations would provide any more price discovery than a single print of the bunched order execution, because the allocations result from a single negotiation for the bunched order size. However, if ''child'' transactions of a larger ''parent'' transaction are priced differently from the parent transaction, these child transactions would not fall within the exclusion in Rule 902(c)(7).

[406] *See infra* Section IX (discussing requirements for public dissemination of inter-affiliate security-based swaps).

[407] *See* MFA I at 2–3 (''we are concerned that post-allocation [security-based swap] data, if publicly disseminated, will allow any of the fund's counterparties to identify transactions that the fund executed with others. Counterparties are often aware of an investment manager's standard fund allocation methodology and therefore, reporting transactions at the allocated level with trade execution time will make evident an allocation scheme that other participants can easily associate with a particular investment manager'').

[408] Ordinarily, the termination of a security-based swap that has been publicly disseminated would itself be an event that must be publicly disseminated. *See* Rule 902(a) (generally providing that a registered SDR shall publicly disseminate a transaction report of a security-based swap ''or a life cycle event or adjustment due to a life cycle event'' immediately upon receiving an appropriate transaction report).

[409] For the reasons noted above, the Commission believes that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to exclude these types of information from public dissemination under Regulation SBSR.

[410] Rule 907(a)(4) provides registered SDRs with some discretion in determining how a reporting side must flag reported data that will be excluded from public dissemination. *See infra* Section VI(G).

[411] *See* Barclays Letter at 3; Cleary II at 6, 16 (stating that public reporting of customized security-based swaps would not aid price discovery, and that the Commission should require the public dissemination of key terms of a customized transaction and an indication that it is customized); DTCC II at 9 (noting the difficulty of comparing price data across transactions that are non-standard and have different terms); ISDA/SIFMA I at 11 (stating that customized security-based swaps provide little to no price discovery value and should not be subject to public dissemination); MFA I at 3 (arguing that Congress did not intend to require public dissemination of comprehensive information for customized security-based swaps and that price discovery serves a purpose only if there is a broad market for the relevant transaction, which is not the case with customized security-based swaps).

[412] *See* Better Markets I at 7; Better Markets II at 3 (stating that many transactions characterized as too complex for reporting or dissemination are, in fact, composites of more straightforward transactions, and that there should be disclosure of information concerning these components to provide meaningful transparency and to prevent market participants from avoiding disclosure by creating composite transactions).

[413] 15 U.S.C. 13(m)(1)(C)(iii).

based swaps—Section 13(m)(1)(C) provides that ''the Commission *shall require real-time public reporting for such transactions,* in a manner that does not disclose the business transactions and market positions of any person'' (emphasis added).

The Commission does not believe that the commenters who argued against disseminating reports of bespoke transactions have provided sufficient justification for an exception to public dissemination. To the contrary, the Commission believes that dissemination of transaction reports of customized security-based swaps could still provide useful information to market observers. Although all of the material elements of a bespoke transaction necessary to understand the market value might not be publicly disseminated, it is an overstatement to argue categorically that bespoke transactions would have no price discovery value, as certain commenters suggested.[414] The disseminated price could, for example, still have an anchoring effect on price expectations for future negotiations in similar or related products, even in thinly-traded markets. Furthermore, even if it is difficult to compare price data across customized transactions, by disseminating reports of all bespoke transactions, market observers can understand the relative number and aggregate notional amounts of transactions in bespoke products versus standardized products.

The Commission recognizes, however, that market observers should have information that permits them to readily distinguish transactions in standardized products from transactions in bespoke security-based swaps. Accordingly, Rule 901(c)(1)(v) provides that, when reporting a transaction to a registered SDR, the reporting side must attach a flag to indicate whether a security-based swap is customized to the extent that the other information provided pursuant to Rule 901(c) does not provide all of the material information necessary to identify the security-based swap or does not contain the data elements necessary to calculate the price of the security-based swap. In addition, final Rule 907(a)(4) requires a registered SDR to establish policies and procedures concerning the use of appropriate flags on disseminated transaction reports that are designed to assist market observers in interpreting the relevance of a transaction.

b. Inter-Affiliate Transactions

Several commenters argued that the Commission should not require public dissemination of inter-affiliate security-based swaps. Issues relating to regulatory reporting and public dissemination of inter-affiliate transactions are discussed in Section IX, *infra.*

c. Security-Based Swaps Entered Into in Connection With a Clearing Member's Default

One commenter argued that reports of security-based swaps effected in connection with a clearing agency's default management processes following the default of a clearing member should not be publicly disseminated in real time.[415] This commenter believed that public dissemination of these transactions could undermine a clearing agency's default management processes and have a negative effect on market stability, particularly because a default likely would occur during stressed market conditions. Accordingly, the commenter recommended that reports of security-based swaps entered into in connection with a clearing agency's default management processes be made available to the Commission in real time but not publicly disseminated until after the default management processes have been completed, as the Commission determines appropriate.

The Commission believes that, at present, the commenter's concerns are addressed by the Commission's approach for the interim phase of Regulation SBSR, which offers reporting sides up to 24 hours after the time of execution to report a security-based swap.[416] The Commission believes that this approach strikes an appropriate balance between promoting post-trade transparency and facilitating the default management process, and is broadly consistent with the commenter's suggestion to allow for public dissemination after the default management process has been completed. Further, the commenter suggested that such transactions typically occur in large size; thus, transactions entered into by surviving clearing members might qualify for any block exception, if the Commission were to promulgate such an exception in the future. The Commission intends to revisit the commenter's concern in connection with its consideration of block thresholds and other potential rules relating to block trades.

d. Total Return Security-Based Swaps

Three commenters argued that there should be no public dissemination of total return security-based swaps (''TRSs''), which offer risks and returns proportional to a position in a security, securities, or loan(s) on which a TRS is based.[417] One of these commenters argued that ''TRS pricing information is of no value to the market because it is driven by many considerations including the funding levels of the counterparties to the TRS and therefore may not provide information about the underlying asset for the TRS.''[418] Another commenter suggested that the fact that TRSs are hedged in the cash market, where trades are publicly disseminated, would mitigate the incremental price discovery benefit of public dissemination of the TRSs.[419] Similarly, a third commenter argued that requiring public dissemination of an equity TRS transaction would not enhance transparency, and could confuse market participants, because the hedging transactions are already publicly disseminated.[420]

The Commission has carefully considered these comments but believes that these commenters have not provided sufficient justification to support a blanket exclusion from public dissemination for TRSs. The Commission believes, rather, that market observers should be given an opportunity to decide how to interpret the relevance of a disseminated trade to the state of the market, and reiterates that relevant statutory provisions state that all security-based swaps shall be publicly disseminated. These statutory provisions do not by their terms distinguish such public dissemination

[414] *See supra* note 411.

[415] *See* LCH.Clearnet Letter at 2 (explaining that, to manage a defaulting clearing member's portfolio, a clearing agency would rely on its non-defaulting members to provide liquidity for a small number of large transactions that would be required to hedge the defaulting member's portfolio, and the ability of non-defaulting members to provide liquidity for these transactions would be impaired if the transactions were reported publicly before the members had an opportunity to mitigate the risks of the transactions).

[416] *See* Rule 901(j); Section VII(B), *infra.* If 24 hours after the time of execution would fall on a day that is not a business day, reporting would be required by the same time on the next day that is a business day.

[417] *See* Barclays Letter at 2–3; Cleary II at 13–14; ISDA/SIFMA I at 13.

[418] ISDA/SIFMA I at 13.

[419] *See* Cleary II at 13–14. The primary concern of this commenter with respect to equity TRSs was the proposed exclusion of equity TRSs from the reporting delay for block trades. *See id.* The Commission expects to consider this comment in connection with its consideration of rules for block trades.

[420] *See* Barclays Letter at 3. The commenter also expressed more general concerns regarding the potential consequences of reduced liquidity in the equity TRS market, noting that if liquidity in the equity TRS market is impaired, liquidity takers could migrate away from a diversified universe of security-based swap counterparties to a more concentrated group of prime brokers, which could increase systemic risk by concentrating large risk positions with a small number of prime brokers. *See* Barclays Letter at 8.

based on particular characteristics of a security-based swap.

The Commission also has considered the argument advanced by one of the commenters that requiring instantaneous public dissemination of an equity TRS transaction could confuse market participants, because the hedging transactions are already publicly disseminated.[421] The Commission disagrees that dissemination of both transactions (*i.e.,* the initial transaction and the hedge) would cause confusion. In other securities markets, public dissemination of initial transactions and their hedges occur on a regular basis.[422] Valuable information could be obtained by observing whether transactions in related products executed close in time have the same or different prices.[423] The commenter who expressed concerns about potential negative consequences of reduced liquidity in the equity TRS market provided no evidence to support its claim.[424]

e. Transactions Resulting From Portfolio Compression

One group of commenters argued that transactions resulting from portfolio compression exercises do not reflect trading activity, contain no market information, and thus should be excluded from public dissemination.[425] One member of that group requested clarification that only trades representing the end result of a netting or compression would need to be reported. This commenter expressed the view that publicly disseminating original transactions as well as the transactions that result from netting or compression would result in double-counting and could present a distorted view of the market.[426]

The Commission recognizes that portfolio compression is designed to mitigate risk between counterparties by reducing gross exposures, and any new security-based swaps executed as a result reflect existing net exposures and might not afford market participants an opportunity to negotiate new terms. Nevertheless, there may be some value in allowing market observers to see how often portfolio compressions occur and how much net exposure is left after much of the gross exposure is terminated. Furthermore, it is possible that new positions arising from a compression exercise could be repriced, and thus offer new and useful pricing information to market observers. Therefore, the Commission is not convinced that there would be so little value in disseminating such transactions that they all should be excluded from public dissemination, even though the original transactions that are netted or compressed may previously have been publicly disseminated. With respect to the commenter's concern regarding double-counting, the Commission notes that Rule 907(a)(4) requires a registered SDR to have policies and procedures for flagging special circumstances surrounding certain transactions, which could include transactions resulting from portfolio compression. The Commission believes that market observers should have the ability to assess reports of transactions resulting from portfolio compressions, and that a condition flag identifying a transaction as the result of a portfolio compression exercise would help to avoid double-counting.

f. Thinly Traded Products

Three commenters expressed concern about the potential impact of real-time public dissemination on thinly traded products.[427] One of these commenters suggested that ''security-based swaps traded by fewer than ten market makers per month should be treated as illiquid and subject to public reporting only on a weekly basis.''[428] The Commission disagrees with this suggestion. In other classes of securities—*e.g.,* listed equity securities, OTC equity securities, listed options, corporate bonds, municipal bonds—all transactions are disseminated in real time, and there is no delayed reporting for products that have only a limited number of market makers. The Commission is not aware of characteristics of the security-based swap market that are sufficiently different from those other markets to warrant delayed reporting because of the number of market makers. Furthermore, given the high degree of concentration in the U.S. security-based swap market, many products have fewer than ten market makers. Thus, the commenter's suggestion—if accepted by the Commission—could result in delayed reporting for a substantial percentage of security-based swap transactions, which would run counter to Title VII's goal of having real-time public dissemination for all security-based swaps (except for block trades). Finally, as noted above, the Title VII provisions that mandate public dissemination on a real-time basis do not make any exception for security-based swaps based on the number of market makers.

Another commenter expressed concern that mandating real-time reporting of thinly-traded products and illiquid markets could increase the price of entering into a derivatives contract to hedge risk by facilitating speculative front-running.[429] Another commenter expressed concern about the impact of real-time post-trade transparency for illiquid security-based swaps on pre-trade transparency that currently exists in the form of indicative prices provided by dealers to their clients (known as ''runs'').[430] This commenter requested that the Commission provide illiquid security-based swaps with an exception from real-time reporting and instead allow for delays roughly commensurate with the trading frequency of the security-based swap.[431] Under the adopted rules, counterparties generally will have up to 24 hours after the time of execution to report security-based swap transactions. This reporting timeframe is designed, in part, to minimize the potential for market disruption resulting from public dissemination of any security-based swap transaction during the interim phase of Regulation SBSR. The Commission anticipates that, during the interim period, it will collect and analyze data concerning the sizes of transactions that potentially affect liquidity in different segments of the market in connection with considering block thresholds.

[421] *See* Barclays Letter at 3.

[422] For example, a trade in a listed single-stock option is frequently hedged by a trade in the underlying stock. Each trade is disseminated via the relevant consolidated tape.

[423] For example, a difference in prices between an equity TRS and the underlying securities might suggest mispricing of either leg of the trade, signaling to market participants the existence of economic rents they could subsequently compete away. Additionally, price discrepancies also could be related to fees or liquidity premiums charged by equity TRS dealers. *See infra* Section XXII(B)(2)(a).

[424] *See* Barclays Letter at 8.

[425] *See* ISDA/SIFMA I at 12. *See also* DTCC II at 20 (stating, with respect to portfolio compression activities, that ''an exact pricing at individual trade level between parties is not meaningful and, therefore, these transactions should not be disseminated''); ISDA IV at 13.

[426] *See* ISDA I at 4–5.

[427] *See* Bachus/Lucas Letter at 2; ISDA IV at 14; UBS Letter at 1. These comments also are discussed in Section VII(B) *infra.*

[428] UBS Letter at 1, note 5.

[429] *See* Bachus/Lucas Letter at 2.

[430] *See* ISDA IV at 14 (expressing concern that the combination of name-attributed runs and a rapidly disseminated set of post-trade information would make it relatively easy for many participants to reconstruct the identity of parties to a particular transaction, which may reduce dealers' willingness to disseminate pre-trade price information in the form of runs, thereby reducing pre-trade transparency).

[431] *See id.*

E. Dissemination of Block Transactions—Rule 902(b)

Rule 902(b), as proposed and re-proposed, would have required a registered SDR to publicly disseminate a transaction report for a block trade (except for the notional amount of the transaction) immediately upon receipt of the information about the block trade from the reporting party, along with the transaction ID and an indicator that the report represented a block trade. Rule 902(b) would further have required the registered SDR to disseminate a complete transaction report for the block trade, including the full notional amount of the transaction, within specified timeframes ranging from eight to 26 hours after execution, depending on the time when the security-based swap was executed. Thus, under Rule 902(b), as proposed and re-proposed, market participants would learn the price of a security-based swap block trade in real time, and would learn the full notional amount of the transaction on a delayed basis.[432]

For the reasons discussed in detail in Section VII(B), *infra,* the Commission is not adopting Rule 902(b).

F. The Embargo Rule—Rule 902(d)

Rule 902(d), as proposed, would have provided that ''[n]o person other than a registered security-based swap data repository shall make available to one or more persons (other than a counterparty) transaction information relating to a security-based swap before the earlier of 15 minutes after the time of execution of the security-based swap; or the time that a registered security-based swap data repository publicly disseminates a report of that security-based swap.'' In other words, the information about the security-based swap transaction would be ''embargoed'' until a registered SDR has in fact publicly disseminated a report of the transaction (or until such time as a transaction should have been publicly disseminated). Rule 902(d) is also referred to as the ''Embargo Rule.'' Rule 902(d) was not revised as part of the Cross-Border Proposing Release, and was re-proposed in exactly the same form as had been initially proposed.

Under Regulation SBSR, only registered SDRs must publicly disseminate security-based swap transaction data to the public. However, other persons with knowledge of a transaction—the counterparties themselves or the venue on which a transaction is executed—also might wish to disclose information about the transaction to third parties (whether for commercial benefit or otherwise). An unfair competitive advantage could result if some market participants could obtain security-based swap transaction information before others. Regulation SBSR, by carrying out the Congressional mandate to publicly disseminate all security-based swap transactions, is intended to reduce information asymmetries in the security-based swap market and to provide all market participants with better information—and better access to information—to make investment decisions. Therefore, the Commission proposed Rule 902(d), which would have imposed a partial and temporary restriction on sources of security-based swap transaction information other than registered SDRs.

Three commenters supported the view that market participants (including SB SEFs) should not be permitted to distribute their security-based swap transaction information before such information is disseminated by a registered SDR.[433] However, three other commenters strongly opposed the proposed Embargo Rule.[434] Other commenters expressed a concern that the proposed Embargo Rule would make it more difficult for SB SEFs to offer ''work-up''[435] functionality.[436] This ''work-up'' process, according to one of the commenters, is designed to foster liquidity in the security-based swap market and to facilitate the execution of larger-sized transactions.[437]

The Commission has carefully reviewed the comments received and has determined to revise the Embargo Rule to provide that the act of sending a report to a registered SDR—not the act of the registered SDR actually disseminating it—releases the embargo. Rule 902(d), as adopted, provides: ''No person shall make available to one or more persons (other than a counterparty *or a post-trade processor*) transaction information relating to a security-based swap *before the primary trade information about the security-based swap is sent to a registered security-based swap data repository*'' (emphasis added).

The Commission agrees with the majority of commenters that it would be beneficial for security-based swap market participants to have the ability to disseminate and receive transaction data without being constrained by the time when a registered SDR disseminates the transaction information. The Commission understands that, in some cases, entities that are likely to become SB SEFs may want to broadcast trades executed electronically across their platforms to all subscribers, because knowing that two counterparties have executed a trade at a particular price can, in some cases, catalyze trading by other counterparties at the same price. Allowing dissemination of transaction information to occur simultaneously

[432] The only difference between Rule 902(b) as proposed and as re-proposed was that the term ''reporting party'' was changed to ''reporting side.''

[433] *See* Markit II at 4 (stating that if SB SEFs were permitted to disseminate data elements of a security-based swap transaction, confusion and data fragmentation would inevitably result, which would ultimately undermine the goal of increased transparency); Barnard I at 4 (stating that market participants should be prohibited from distributing their market data prior to the dissemination of that data by a registered SDR to prevent the development of a two-tier market); ISDA IV at 17 (stating that ''it is unclear why any person should be allowed to make the data available to another market data source ahead of the time that [an SDR] is allowed to publicly disseminate such transaction,'' and recommending that proposed Rule 902(d) be revised to refer only to the time that an SDR disseminates a report of the security-based swap).

[434] *See* GFI Letter at 2; SDMA II at 4; WMBAA Letter at 8–9.

[435] *See* GFI Letter at 3 (''A typical workup transaction begins when two market participants agree to transact at a certain price and quantity. The transaction does not necessarily end there, however, and the two participants then have the opportunity to transact further volume at the already-established price. Thereafter, other market participants may join the trade and transact with either the original counterparties to the trade or with other firms if they agree to trade further volume at the established price''); SDMA II at 3 (''Trade work ups are a common practice in which the broker looks for additional trading interest at the same time a trade is occurring—or ''flashing'' on the screen—in the same security at the same price. The ability to view the price of a trade as it is occurring is critical to broker's ability to locate additional trading interest. The immediate flash to the marketplace increases the probability that additional buyers and sellers, of smaller or larger size, will trade the same security at the same time and price''); WMBAA II at 3 (''Work-up enables traders to assess the markets in real-time and make real-time decisions on trading activity, without the fear of moving the market one way or another'').

[436] *See* GFI Letter at 3; SDMA II at 3 (if ''the SB SEF is prohibited from 'flashing' the price of a trade as it occurs and the brokers must wait until after the SB SDR has disclosed the price, the broker's window of opportunity to locate additional trading interest will close''); WMBAA II at 3.

[437] *See* GFI Letter at 3.

with transmission to a registered SDR will allow SB SEF participants to see last-sale information for the particular markets on which they are trading, which could facilitate the work-up process and thus enhance price discovery.

One commenter expressed concern, however, that permitting the distribution of market data prior to dissemination of the information by a registered SDR could result in the development of a two-tier market.[438] Although the Commission generally shares the commenter's concern about information asymmetries, the Commission does not believe that Rule 902(d), as adopted, raises that concern. Certain market participants might learn of a completed transaction before others who rely on public dissemination through a registered SDR. However, the time lag is likely to be very small because Rule 902(a) requires a registered SDR to publicly disseminate a transaction report ''immediately upon receipt of information about the security-based swap.'' The Commission understands that, under the current market structure, trading in security-based swaps occurs for the most part manually (rather than through algorithmic means) and infrequently. Thus, obtaining knowledge of a completed transaction through private means a short time before others learn of the transaction from a registered SDR is unlikely, for the foreseeable future, to provide a significant advantage. Furthermore, as discussed above regarding the ''work-up'' process, the most likely recipients of direct information about the completed transaction are other participants of the SB SEF. Thus, an important segment of the market—*i.e.,* competitors of the counterparties to the original transaction in the work up who are most likely to have an interest in trading the same or similar products—are still benefitting from post-trade transparency, even if it comes via the work-up process on the SB SEF rather than through a registered SDR.

Two commenters raised arguments related to the ownership of the security-based swap transaction data and were concerned that the proposed Embargo Rule would place improper restrictions on the use of security-based swap market data.[439] One of these commenters recommended that the Commission revise the Embargo Rule ''in such a way that . . . the security-based swap counterparties and SB SEFs [would] continue to have the ability to market and commercialize their own proprietary data.''[440] The other commenter recommended that the Commission make clear that nothing in the final rules is intended ''to impose or imply any limit on the ability of market participants . . . to use and/or commercialize data they create or receive in connection with the execution or reporting of swap data.''[441]

The Commission declines to revise Rule 902(d) in the manner suggested by these commenters. As the Commission notes in the SDR Adopting Release, ''the issue of who owns the data is not particularly clear cut, particularly when value is added to it.''[442] If the Commission were to revise the rule in the manner suggested by commenters, it would seem to make a presumption about who owns the data, which may be viewed as the Commission favoring one business model over another. As further noted in the SDR Adopting Release, the Commission does not support any particular business model[443] and, therefore, does not believe it is necessary or appropriate to revise the rule as suggested by these commenters.

As originally proposed, the Embargo Rule had an exception for disseminating the transaction information to counterparties, as the counterparties to the transaction should be allowed to receive information about their own security-based swap transactions irrespective of whether such information has been reported to or disseminated by a registered SDR. However, two commenters noted that SB SEFs also will need to provide transaction data to entities involved in post-trade processing, irrespective of whether the embargo has been lifted.[444] The Commission recognizes that, after a trade is executed, there are certain entities that perform post-trade services—such as matching, confirmation, and reporting—that may need to receive the transaction information before it is sent to a registered SDR. For example, a third party could not act as agent in reporting a transaction to a registered SDR on behalf of a reporting side if it could not receive information about the executed transaction before it was submitted to the registered SDR. In the Regulation SBSR Proposing Release, the Commission stated that counterparties to a security-based swap could rely on agents to report security-based swap data on their behalf.[445] Without an exception, such use of agents could be impeded, an action the Commission did not intend. Accordingly, the Commission is revising the Embargo Rule to add an explicit exception for ''post-trade processors.'' The Commission is also adding a new paragraph (x) to final Rule 900, which defines ''post-trade processor'' as ''any person that provides affirmation, confirmation, matching, reporting, or clearing services for a security-based swap transaction.''

Finally, one commenter recommended a carve-out from Rule 902(d) not only for counterparties, but also for their affiliates, ''to allow for internal communication of SBS data.''[446] Rule 902(d)—as proposed, re-proposed, and adopted—includes a carve-out for counterparties, which could include affiliates, to the extent that an affiliate is an indirect counterparty as defined in Rule 900. The Commission continues to believe that it is necessary for counterparties to know when they have executed a trade. The Commission further notes that Rule 902(d), as adopted, contains an exception for post-trade processors,[447] which could include post-trade processors that are affiliates of the counterparties. Thus, Rule 902(d) would not prohibit a counterparty to a security-based swap transaction from providing the transaction information to an affiliate before providing it to a registered SDR, if that affiliate will serve as the counterparty's agent for reporting the transaction to the registered SDR. However, Rule 902—as proposed, re-proposed, and adopted—includes no broad carve-out for all affiliates of the counterparties. The Commission does not see a basis for allowing such a broad

[438] *See* Barnard I at 4.

[439] *See* WMBAA II at 8; Tradeweb Letter II at 6.

[440] WMBAA II at 8.

[441] Tradeweb Letter II at 6.

[442] SDR Adopting Release, Section VI(D)(3)(c)(iii) (citing difficulties associated with determining ownership of data as one of several reasons for not adopting, at this time, a rule prohibiting an SDR and its affiliates from using, for commercial purposes, security-based swap data that the SDR maintains without obtaining express written consent from both counterparties to the security-based swap transaction or the reporting party). *See also* Securities Exchange Act Release 63825 (February 2, 2011), 76 FR 10948 (February 28, 2011) at 10961–7 (''SB SEF Proposing Release'') (discussing the proposed imposition of certain requirements on SB SEFs with respect to services provided and fees charged).

[443] *See* SDR Adopting Release, Section III(D) (discussing business models of SDRs).

[444] *See* BlackRock Letter at 9; ISDA IV at 17 (recommending a carve-out from Rule 902(d) for third-party service providers that one or both counterparties use for execution, confirmation, trade reporting, portfolio reconciliation and other services that do not include the public dissemination of security-based swap data).

[445] *See* 75 FR 75211–12.

[446] ISDA IV at 17.

[447] *See* Rule 900(x) (defining ''post-trade processor'' as ''any person that provides affirmation, confirmation, matching, reporting, or clearing services for a security-based swap transaction'').

exception for all affiliates, which could undermine the purpose of Rule 902(d), as discussed above.

G. Condition Flags—Rule 907(a)(4)

Rule 907(a)(4), as originally proposed, would have required a registered SDR to establish and maintain written policies and procedures ''describing how reporting parties shall report and, consistent with the enhancement of price discovery, how the registered security-based swap depository shall publicly disseminate, reports of, and adjustments due to, life cycle events; security-based swap transactions that do not involve an opportunity to negotiate any material terms, other than the counterparty; and any other security-based swap transactions that, in the estimation of the registered security-based swap data depository, do not accurately reflect the market.'' The Commission re-proposed Rule 907(a)(4) in the Cross-Border Proposing Release with only minor technical revisions.[448]

One commenter expressed the view that a registered SDR should have the flexibility to determine and apply special indicators.[449] Another commenter suggested that, to be meaningfully transparent, security-based swap transaction data should include ''condition flags'' comparable to those used in the bond market.[450] As discussed more fully below, the Commission agrees that such ''condition flags'' could provide additional transparency to the security-based swap market. The Commission believes that the condition flags that registered SDRs will develop pursuant to final Rule 907(a)(4) could provide information similar to the information provided by the condition flags used in the bond market. The registered SDR's condition flags could include, for example, flags indicating that a security-based swap was an inter-affiliate transaction or a transaction entered into as part of a trade compression.

A third commenter suggested that a registered SDR should not have discretion to determine whether a particular transaction reflects the market, as the registered SDR may not have sufficient information to make such a determination.[451] The Commission agrees with the commenter that a registered SDR may not have sufficient information to ascertain whether a particular transaction ''do[es] not accurately reflect the market,'' as would have been required under Rule 907(a)(4), as originally proposed. Therefore, the Commission will not require the registered SDR to have policies and procedures for attaching an indicator that merely conveys that the transaction, in the estimation of the registered SDR, does not accurately reflect the market.

Instead, the Commission believes that requiring the registered SDR to provide information about any special circumstances associated with a transaction report could help market observers better understand the report and enhance transparency. For example, Rule 901(c)(1)(v), as adopted, requires a reporting side to attach a flag if a security-based swap is customized to the extent that other information provided for the swap does not provide all of the material information necessary to identify the customized security-based swap or does not contain the data elements necessary to calculate the price.[452] In addition, Rule 905(b)(2), as adopted, requires a registered SDR that receives a correction to information that it previously disseminated publicly to publicly disseminate a corrected transaction report with an indication that the report relates to a previously disseminated transaction.[453]

The Commission, therefore, is adopting Rule 907(a)(4) with certain additional language to respond to the comments and to clarify how Rule 907(a)(4) should apply in circumstances contemplated by but not fully addressed in the original proposal or the re-proposal. The Commission has revised Rule 907(a)(4) as follows: New subparagraph (i) requires the registered SDR to have policies and procedures for ''identifying characteristic(s) of a security-based swap, or circumstances associated with the execution or reporting of the security-based swap, that could, in the fair and reasonable estimation of the registered security-based swap data repository, cause a person without knowledge of these characteristic(s) or circumstances to receive a distorted view of the market.'' This language retains the idea that the appropriate characteristics or circumstances remain ''in the estimation of'' the registered SDR, but requires the SDR's exercise of this discretion to be ''fair and reasonable'' to emphasize that the estimation should not result in flags that would not allow market observers to better understand the transaction reports that are publicly disseminated. Rule 907(a)(4)(i), as adopted, also widens the scope of transactions to which the provision applies.[454] This provision grants a registered SDR the flexibility to determine which special circumstances require flags and to change that determination over time, if warranted.[455] Subparagraph (ii) provides that the registered SDR's policies and procedures must ''establish[ ] flags to denote such characteristic(s) or circumstance(s),'' explicitly incorporating the concept of condition flags suggested by the commenter.[456] Subparagraph (iii) requires policies and procedures ''directing participants to apply such flags, as appropriate, in their reports'' to the registered SDR. Finally, subparagraph (iv) requires these policies and procedures to address, in part, ''applying such flags to disseminated reports to help to prevent a distorted view of the market.''

The Commission also is adopting Rule 907(a)(4) with certain additional language in subparagraph (iv) that clarifies the handling of security-based swap information that is required to be reported under Rule 901 but which a registered SDR is required by Rule 902(c) not to publicly disseminate. As noted above, even in the initial proposal, the Commission contemplated that certain information would fall into this category.[457] Rule 907(a), as originally proposed, would have required a registered SDR to establish and maintain policies and procedures that addressed, among other things, the public dissemination of security-based swap data. Carrying out that duty in a manner consistent with Rule 902—and, in particular, with Rule 902(c)—will necessarily require a registered SDR to differentiate reported information that is required to be publicly disseminated from reported information that is

[448] The Commission changed the words ''reporting parties'' to ''reporting sides'' and ''depository'' to ''repository.''

[449] *See* Barnard I at 3.

[450] *See* MarkitSERV I at 10.

[451] *See* DTCC II at 20.

[452] *See supra* Section II(B)(2)(b)(vi).

[453] *See infra* Section XX(B).

[454] This revision to Rule 907(a)(4) also removes the references to public dissemination of life cycle events that were proposed and re-proposed. These references have been relocated to final Rule 907(a)(3). Rule 907(a)(3), as proposed and re-proposed, addressed only the reporting and public dissemination of error reports. Life cycle events are similar to error reports in that they reflect new information that relates to a previously executed security-based swap. Therefore, Rule 907(a)(3), as adopted, now requires a registered SDR to have policies and procedures for ''specifying procedures for reporting life cycle events and corrections to previously submitted information, making corresponding updates or corrections to transaction records, and applying an appropriate flag to the transaction report to indicate that the report is an error correction required to be disseminated by [Rule 905(b)(2)] or is a life cycle event, or any adjustment due to a life cycle event, required to be disseminated by [Rule 902(a)].'' *See infra* Section XII(C).

[455] *See* Barnard I at 3.

[456] *See* MarkitSERV I at 10.

[457] *See* Regulation SBSR Proposing Release, 75 FR 75234–35.

required not to be publicly disseminated.[458] The new language in final Rule 907(a)(4)(iv)(B) calls attention to this particular requirement. Rule 907(a)(4)(iv)(B), as adopted, requires the registered SDR to have policies and procedures for suppressing from public dissemination a transaction referenced in Rule 902(c).[459]

In addition to the requirements for indications in the case of error reports or bespoke transactions, the Commission believes that registered SDRs generally should include the following in its list of condition flags:

• *Inter-affiliate security-based swaps.* As discussed in detail in Section VI(D), *infra,* the Commission is not exempting inter-affiliate transactions from public dissemination. However, the Commission believes it could be misleading if market observers did not understand that a transaction involves affiliated counterparties.

• *Transactions resulting from netting or compression exercises.*[460] The Commission believes that market observers should be made aware that these transactions are related to previously existing transactions and generally do not represent new risks being assumed by the counterparties.

• *Transactions resulting from a ''forced trading session'' conducted by a clearing agency.*[461] The Commission believes that it would be helpful for market observers to understand that such transactions may not be available to market participants outside of the forced trading session.

• *Transactions reported more than 24 hours after execution.* The Commission believes that there is price discovery value in disseminating the transaction report, particularly in cases where there are few or no other recent last-sale reports in that product. However, all market observers should understand that the report is no longer timely and thus may not reflect the current market at the time of dissemination.

• *Transactions resulting from default of a clearing member.* The Commission believes that the fact that the transaction was necessitated by a clearing agency's need to have surviving clearing members assume the positions of a defaulting clearing member is important information about understanding the transaction and market conditions generally.

• *Package trades.* ''Package trade'' is a colloquial term for a multi-legged transaction of which a security-based swap constitutes one or more legs. Market observers should be made aware that the reported price of a security-based swap that is part of a package trade might reflect other factors—such as the exchange of an instrument that is not a security-based swap—that are not reflected in the transaction report of the security-based swap itself.

This list is by way of example and not of limitation. There are likely to be other types of transactions or circumstances associated with particular transactions that may warrant a condition flag. The Commission anticipates that each registered SDR will revise its list over time as the security-based swap market evolves and registered SDRs and market participants gain greater insight into how to maximize the effectiveness of publicly disseminated transaction reports.

VII. Block Trades and the Interim Phase of Regulation SBSR

Section 13m(1)(E) of the Exchange Act[462] requires the Commission rule for real-time public dissemination of security-based swap transactions to: (1) ''Specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts'' and (2) ''specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public.'' In addition, Section 13m(1)(E)(iv) of the Exchange Act[463] requires the Commission rule for real-time public dissemination of security-based swap transactions to contain provisions that ''take into account whether the public disclosure [of transaction and pricing data for security-based swaps] will materially reduce market liquidity.''[464]

As discussed further below, the Commission is neither proposing nor adopting rules relating to block trades at this time. However, the rules, as adopted, establish an interim phase of Regulation SBSR. During this first phase, as described below, reporting sides—with certain minor exceptions—will have up to 24 hours (''T+24 hours'') after the time of execution to report a transaction. The registered SDR that receives the transaction information would then be required to publicly

[458] One commenter noted its view that Rule 907(a)(4), as proposed, seemed to delegate to the discretion of the SDR whether and how certain security-based swap activity would be publicly disseminated, and requested that the Commission clearly establish in Regulation SBSR that certain security-based swap activity is not subject to public dissemination. *See* ISDA IV at 13. The Commission believes that the rules as adopted do clearly establish what security-based swap activity is not subject to public dissemination. Rule 902(a), as adopted, requires the registered SDR to publicly disseminate a transaction report of a security-based swap, or a life cycle event or adjustment due to a life cycle event, immediately upon receipt of information about the security-based swap, except as provided in Rule 902(c). Rule 902(c) provides a list of information and types of security-based swap transactions that a registered security-based swap shall not disseminate. *See supra* Section VI(D).

[459] Under Rule 907(a)(4)(iv), the registered SDR's policies and procedures must direct the reporting side to apply appropriate flags to transaction reports. In the case of a report falling within Rule 902(c), the reporting side for the relevant transaction is required to use the flag that signals to the registered SDR that the report should not be publicly disseminated. The Commission notes that Rule 907(a)(4) affords registered SDRs some discretion to determine precisely how a reporting side must flag reported data that will be excluded from public dissemination under Rule 902(c). For example, a registered SDR may determine not to require a specific ''do not disseminate'' tag for historical security-based swaps if it is clear from context that they are historical security-based swaps and not current transactions. As described in Section VI(D) above, the Commission does not believe that a registered SDR would violate Rule 902(c) if it disseminated a report of a transaction that fell within Rule 902(c) if the reporting side fails to appropriately flag the transaction.

[460] This applies only to transactions resulting from netting or compression exercises other than through a registered clearing agency. Security-based swaps resulting from netting or compression exercises carried out by a registered clearing agency are not subject to public dissemination. *See* Rule 902(c)(6). *See also supra* Section VI(D)(1) (explaining Rule 902(c)(6)); Section VI(D)(2)(v) (explaining why the Commission believes that transactions resulting from portfolio compression—other than clearing transactions—should be publicly disseminated).

[461] Entities that the Commission previously exempted from certain Exchange Act requirements, including clearing agency registration, have informed the Commission that they undertake ''forced trading'' sessions in order to promote accuracy in the end-of-day valuation process. *See, e.g.,* Securities Exchange Act Release No. 59527 (March 6, 2009), 74 FR 10791, 10796 (March 12, 2009) (Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With Request on Behalf of ICE U.S. Trust LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments) (describing ''forced trading sessions'' conducted by a clearing agency as follows: ''ICE Trust represents that, in connection with its clearing and risk management process, it will calculate an end-of-day settlement price for each Cleared CDS in which an ICE Trust Participant has a cleared position, based on prices submitted by ICE Trust Participants. As part of this mark-to-market process, ICE Trust will periodically require ICE Trust Participants to execute certain CDS trades at the applicable end-of-day settlement price. Requiring ICE Trust Participants to trade CDS periodically in this manner is designed to help ensure that such submitted prices reflect each ICE Trust Participant's best assessment of the value of each of its open positions in Cleared CDS on a daily basis'').

[462] 15 U.S.C. 78m(m)(1)(E).

[463] 15 U.S.C. 78m(m)(1)(E)(iv).

[464] These statutory mandates apply only with respect to *cleared* security-based swaps. The Dodd-Frank Act does not require the Commission to specify block thresholds or dissemination delays or to take into account how public disclosure will materially reduce market liquidity with respect to *uncleared* security-based swaps. For security-based swaps that are not cleared but are reported to an SDR or the Commission under Section 3C(a)(6) of the Exchange Act, ''the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person.'' 15 U.S.C. 78m(1)(C)(iii).

disseminate a report of the transaction immediately thereafter.

The Commission recognizes that the introduction of mandated post-trade transparency in the security-based swap market could have a significant impact on market participant behavior and the provision of liquidity. The interim phase is designed, among other things, to generate information about how market participants behave in an environment with post-trade transparency. Furthermore, once the first phase is implemented, reporting sides will be required under Regulation SBSR to report, among other things, the time of execution of their security-based swap transactions. As described in a staff analysis of the inventory management of dealers in the market for single-name CDS based on transaction data from DTCC–TIW, security-based swap transaction data currently stored in DTCC–TIW include the time of reporting, but not the time of the execution.[465] Having the execution time instead of only the reporting time will enable staff to perform a more robust and granular analysis of any hedging that may or may not occur within the first 24-hour period after execution. After collecting and analyzing data that are more granular and reflect the reactions of market participants to T+24 hour post-trade transparency, the Commission anticipates that it will undertake further rulemaking to propose and adopt rules related to block trades and the reporting and public dissemination timeframe for non-block trades.

A. Proposed Rules Regarding Block Trades

The Commission did not propose specific thresholds for block trades in the Regulation SBSR Proposing Release. Instead, the Commission described general criteria that it would consider when setting specific block trade thresholds in the future.[466] The Commission stated that it ''preliminarily believes that the general criteria for what constitutes a large notional security-based swap transaction must be specified in a way that takes into account whether public disclosure of such transactions would materially reduce market liquidity, but presumably should be balanced by the general mandate of Section 13(m)(1) of the Exchange Act, which provides that data on security-based swap transactions must be publicly disseminated in real time, and in a form that enhances price discovery.'' [467] The Commission further stated: ''For post-trade transparency to have a negative impact on liquidity, market participants would need to be affected in a way that either: (1) Impacted their desire to engage in subsequent transactions unrelated to the first; or (2) impacted their ability to follow through with further actions after the reported transaction has been completed that they feel are a necessary consequence of the reported transaction.'' [468]

The Commission noted, with respect to the first case, that post-trade dissemination of transaction prices could lead to narrower spreads and reduce participants' willingness to trade. However, the Commission noted that liquidity could be enhanced if market participants increased their trading activity as a result of the new information. Because it would be difficult, if not impossible, to estimate with certainty which factor would prevail in the evolving security-based swap market, the Commission was guided by the general mandate of Section 13(m)(1) and the Commission's preliminary belief that even in illiquid markets, transaction prices form the foundation of price discovery.[469] Therefore, the Commission proposed that prices for block trades be disseminated in the same fashion as prices for non-block transactions.

The Commission noted that, in the second case, counterparties may intend to take further action after an initial transaction for hedging purposes. The Commission believed that, for a transaction that was sufficiently large, disseminating the size of such a transaction could signal to the market that there is the potential for another large transaction in a particular security-based swap or related security.[470] Therefore, in order to give the market time to absorb any subsequent transactions, the Commission stated that it preliminarily believed that the size of a sufficiently large transaction should be suppressed for a certain period of time to provide time for subsequent transactions.[471]

In the Regulation SBSR Proposing Release, the Commission noted a variety of metrics that could be used to determine whether a security-based swap transaction should be considered a block trade.[472] They included: (1) The absolute size of the transaction; (2) the size of the transaction relative to other similar transactions; (3) the size of the transaction relative to some measure of overall volume for that security-based swap instrument; and (4) the size of the transaction relative to some measure of overall volumes for the security or securities underlying the security-based swap.[473] The Commission stated that the metric should be chosen in a way that minimizes inadvertent signaling to the market of potential large follow-on transactions.[474]

Although the Commission did not propose block thresholds, the Commission did propose two ''waves'' of public dissemination of block trades for when it had adopted block thresholds. Rule 902(b), as proposed and re-proposed, would have required a registered SDR to publicly disseminate a transaction report of a security-based swap that constitutes a block trade immediately upon receipt of information about the block trade from the reporting party. The transaction report would have been required to consist of all the information reported pursuant to Rule 901(c)—except for the notional amount—plus the transaction ID and an indicator that the report represents a block trade. The second wave would have required the registered SDR to publicly disseminate a complete transaction report for the block trade (including the transaction ID and the full notional amount) between 8 and 26 hours after the execution of the block trade. Thus, under Rule 902(b), as proposed and re-proposed, market participants would have learned the price and all other primary trade

[465] *See* ''Inventory risk management by dealers in the single-name credit default swap market'' (October 17, 2014) at 5, available at *http://www.sec.gov/comments/s7-34-10/s73410-184.pdf* (''Hedging Analysis'').

[466] *See* Regulation SBSR Proposing Release, 75 FR 75228.

[467] *Id.* at 75228–29.

[468] *Id.* at 75229.

[469] *See id.*

[470] *See id.*

[471] *See id.*

[472] The Commission considered several tests including a percentage test (the top N-percent of trade would be considered block) and set forth data from the Depository Trust Clearing Corporation (''DTCC'') regarding single-name corporate CDS and single name sovereign CDS. The Commission noted that the observed trade sizes would suggest certain cut-off points when considering single-name corporate CDS or sovereigns as a whole. The Commission also noted, however, that there may still be differences in liquidity between individual corporates and sovereigns, as well as linkages between the underlying cash markets and the CDS markets that a simple percentage or threshold test would not capture. In addition, the Commission's Division of Risk, Strategy, and Financial Innovation (which has been renamed the Division of Economic and Risk Analysis) prepared an analysis of several different block trade criteria in January 2011, based on the same DTCC data. The analysis examined fixed minimum notional amount thresholds; dynamic volume-based thresholds based on the aggregate notional amount of all executions in a CDS instrument over the past 30 calendar days; and a combination of dynamic volume-based thresholds and fixed minimum thresholds of $10 and $25 million, respectively. *See id.* at 75230–31.

[473] *See id.*

[474] *See id.*

information (except notional amount) about a block trade in real time, and the full notional amount of the transaction on a delayed basis.[475] Registered SDRs would have been responsible for calculating the specific block thresholds based on the formula established by the Commission and publicizing those thresholds, but the Commission emphasized that a registered SDR would be performing ''mechanical, non-subjective calculations'' when determining block trade thresholds.[476]

The Commission proposed and re-proposed a variety of other provisions related to block trades. Proposed Rule 900 defined ''block trade'' to mean a large notional security-based swap transaction that satisfied the criteria in Rule 907(b). Proposed Rule 907(b) would have required a registered SDR to establish and maintain written policies and procedures for calculating and publicizing block trade thresholds for security-based swaps in accordance with the criteria and formula for determining block size specified by the Commission. Proposed Rule 907(b)(2) also would have provided that a registered SDR should not designate as a block trade: (1) Any security-based swap that is an equity total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the security-based swap is based; or (2) any security-based swap contemplated by Section 13(m)(1)(C)(iv) of the Exchange Act.[477]

B. Potential Impact on Liquidity

The Commission received several comments addressing the issue of timing for public dissemination and the potential impact of public dissemination on liquidity. The commenters vary significantly in their views on this issue. One commenter stated that the proposed timeframes for publicly disseminating security-based swap transaction reports would not materially reduce market liquidity.[478] Another commenter, however, expressed the view that ''[t]here is insufficient liquidity in the single-name credit default swap market to support real-time public dissemination of non-block transaction data for all but a handful of instruments without creating price moving events.''[479] A third commenter expressed concern that real-time security-based swap reporting, ''if implemented without adequate safeguards, could unnecessarily increase the price of entering into a derivatives contract to hedge risk''[480] and cautioned that requiring real-time reporting of thinly traded products in illiquid markets in an effort to compel derivatives to trade similarly to exchange-listed products represented ''a fundamentally flawed approach that demonstrates a lack of understanding of the existing market structure.''[481] A fourth commenter expressed concern about the impact of real-time post-trade transparency for illiquid security-based swaps on pre-trade transparency that currently exists in the form of indicative prices provided by dealers to their clients (known as ''runs'').[482] This commenter requested that the Commission provide illiquid security-based swaps with an exception from real-time reporting and instead allow for delays roughly commensurate with the trading frequency of the security-based swap.[483]

In addition, several commenters raised concerns about the effect of an improperly designed block trade regime.[484] One commenter stated that an appropriate block exemption is critical to the successful implementation of Title VII.[485] Several commenters expressed the view that improper block thresholds or definitions would adversely impact liquidity.[486] One commenter noted that the SEC and CFTC's proposed block trade rules would adversely impact liquidity.[487] By contrast, one commenter recommended that the Commission consider that increased transparency of trades that are large relative to the liquidity of the product may attract new entrants to the market and may result in increased liquidity.[488]

The Commission has considered these comments as well as the statutory requirement that the Commission rule for public dissemination of security-based swap transactions contain provisions that ''take into account whether the public disclosure [of transaction and pricing data for security-based swaps] will materially reduce market liquidity.''[489] The Commission is adopting these final rules for regulatory reporting and public dissemination of security-based swaps with a view toward implementing additional rules in one or more subsequent phases to define block thresholds and to revisit the timeframes for reporting and public dissemination of block and non-block trades. This approach is designed to increase post-trade transparency in the security-based swap market—even in its initial phase—while generating new data that could be studied in determining appropriate block thresholds after the initial phase. The Commission also considered several comments related to the timing of public dissemination and believes that at present the commenters' concerns are appropriately addressed by the Commission's adoption of T+24 hour reporting during the interim phase.

During this phase, the reporting side will have up to 24 hours after the time of execution of a security-based swap transaction to report it to a registered

[475] Rule 902(b)(3), as proposed and re-proposed, would have provided that, if a registered SDR was closed when it otherwise would be required to disseminate information concerning a block trade, the registered SDR would be required to disseminate the information immediately upon re-opening.

[476] *See* Regulation SBSR Proposing Release, 75 FR 75228.

[477] 15 U.S.C. 78m(m)(1)(C)(iv) (''With respect to security-based swaps that are determined to be required to be cleared under section 78c–3(b) of this title but are not cleared, the Commission shall require real-time public reporting for such transactions'').

[478] *See* Barnard I at 2.

[479] UBS Letter at 1.

[480] Bachus/Lucas Letter at 2.

[481] *Id.*

[482] *See* ISDA IV at 14 (expressing concern that the combination of name-attributed runs and a rapidly disseminated set of post-trade information would make it relatively easy for many participants to reconstruct the identity of parties to a particular transaction, which might reduce dealers' willingness to disseminate pre-trade price information in the form of runs, thereby reducing pre-trade transparency).

[483] *See id.,* note 21 (stating, for example, that a 24-hour delay would be appropriate for a security-based swap that trades, on average, once per day, and security-based swap that trades 10 times per day could be reported in real time).

[484] *See* Barclays Letter at 8; BlackRock Letter at 8, note 10; Cleary I at 10–11; Cleary II at 2; Institutional Investors Letter at 4; ISDA/SIFMA I at 2; ISDA/SIFMA Block Trade Study at 6; ISDA/SIFMA II at 8; J.P. Morgan Letter at 5; WMBAA I at 3.

[485] *See* ISDA/SIFMA I at 2.

[486] *See* Barclays Letter at 8 (stating that overly broad block trade thresholds could adversely impact the liquidity and pricing of security-based swaps); J.P. Morgan Letter at 5 (stating that liquidity may be significantly reduced if too few trades receive block treatment); BlackRock Letter at 8, note 10 (expressing concern that it could become infeasible for market participants to enter into block trades for some products if the Commissions fail to balance liquidity and price transparency correctly); Institutional Investors Letter at 4 (noting, with specific reference to the CFTC's proposed rules, that the benefits of large trades could be negated, and institutional investors' costs increased, if block trade sizes were set too high); ISDA/SIFMA II at 8 (stating that an overly restrictive definition of block trade has great potential to adversely affect the ability to execute and hedge large transactions); WMBAA I at 3 (expressing the view that block trade thresholds ''be set at such a level that trading may continue without impacting market participants' ability to exit or hedge their trades'').

[487] *See* Cleary II at 2.

[488] *See* GETCO Letter at 1–2.

[489] 15 U.S.C. 78m(m)(1)(E). However, this mandate applies only with respect to cleared security-based swaps. No provision of Title VII requires the Commission to specify block thresholds or dissemination delays, or to take into account how public disclosure will materially reduce market liquidity, for uncleared security-based swaps.

SDR, regardless of its notional amount.[490] The registered SDR will be required, for all dissemination-eligible transactions,[491] to publicly disseminate a report of the transaction immediately upon receipt of the information. Even with the T+24 reporting of transactions, the Commission anticipates being able to collect significant new information about how market participants behave in an environment with post-trade transparency, which will inform the Commission's analysis and effort to determine what block thresholds and time delays may be appropriate.

In developing a regulatory regime for post-trade transparency in the security-based swap market, the Commission is cognizant of rules adopted by the CFTC to provide for post-trade transparency in the swap market. Commission staff analyzed the effect of the adoption of post-trade transparency in the swap market, which is regulated by the CFTC.[492] That analysis shows no discernible empirical evidence of economically meaningful effects of the introduction of post-trade transparency in the swap market at this time. In particular, the study did not find negative effects such as reduced trading activity. Based on this analysis, the Commission believes that post-trade transparency does not seem to have a negative effect on liquidity and market activity in the swap market.[493]

1. T+24 Hour Reporting for All Transactions

The Commission initially proposed to require reporting to a registered SDR of the primary trade information of all security-based swaps ''as soon as technologically practicable, but in no event later than 15 minutes after the time of execution of the security-based swap transaction.'' [494] For all dissemination-eligible transactions other than block trades, the registered SDR would have been required to publicly disseminate a report of the transaction immediately and automatically upon receipt of the transaction. As proposed, block trades would have been subject to two-part dissemination: (1) An initial report with suppressed notional amount disseminated in real-time; and (2) a full report including notional amount disseminated between 8 to 26 hours after execution.[495]

Commenters expressed mixed views regarding the proposed reporting timeframes. Two commenters generally supported them.[496] However, several commenters stated that, at least in the near term, it would be difficult to comply with the reporting timeframes as proposed.[497] One of these commenters argued, for example, that the benefits of providing security-based swap information within minutes of execution did not outweigh the infrastructure costs of building a mechanism to report in real time, particularly given the likelihood of errors.[498] Another commenter expressed concern that ''the 15 minute limit is not technologically practicable under existing communications and data infrastructure.'' [499]

Commenters also advocated that the Commission phase-in reporting deadlines over time, similar to the implementation model for TRACE, to allow regulators to assess the impact of post-trade transparency on the security-based swap market.[500] One commenter noted that phased-in implementation would allow regulators to assess the impact of transparency on the security-based swap market and make adjustments, if necessary, to the timing of dissemination and the data that is disseminated.[501] Other commenters echoed the belief that a phased approach would allow the Commission to assess the impact of public reporting on liquidity in the security-based swap market, monitor changes in the market, and adjust the reporting rules, if necessary.[502]

Three commenters recommended a 24-hour delay for reporting block trades,[503] and one recommended a delay of at least five days with an indefinite delay of full notional size.[504] Of those commenters, two also suggested that the delay could be reduced or refined after the Commission gathers additional information about the security-based swap market.[505] In contrast, two commenters recommended block delays as short as 15 minutes.[506] In addition,

[490] For a security-based swap that is subject to regulatory reporting and public dissemination solely by operation of Rule 908(a)(1)(ii), however, a reporting side is required to report the information required under Rules 901(c) and 901(d) within 24 hours of acceptance for clearing. *See* Rule 901(j); Section XV(C)(4), *infra.*

[491] *See* Rule 902(c) (setting forth certain types of security-based swaps that are not to be publicly disseminated).

[492] *See* ''Analysis of post-trade transparency under the CFTC regime'' (October 17, 2014), available at *http://www.sec.gov/comments/s7-34-10/s73410-183.pdf* (''Analysis of Post-Trade Transparency''). *See also infra* Sections XXII(C)(2)(b), XXII(C)(2)(c), XXII(C)(3)(a), and XXII(D)(4)(b). The one comment that the Commission received on the Analysis of Post-Trade Transparency did not directly address the staff's analysis. This comment is discussed in notes 688 and 1011, *infra.*

[493] *See* Analysis of Post-Trade Transparency at 1 (''While we acknowledge that there are significant differences between the index [credit default swap] market and the security-based swap market, the data analysis presented here may enhance the Commission's understanding of the potential economic effects of mandated post-trade transparency in the security-based swap market'').

[494] *See* Rules 901(c) and 900 (definition of ''real time''), as originally proposed.

[495] Rule 902(b)(1), as proposed and re-proposed, would have provided: ''If the security-based swap was executed on or after 05:00 UTC and before 23:00 UTC of the same day, the transaction report [for the block trade] (including the transaction ID and the full notional amount) shall be disseminated at 07:00 UTC of the following day.'' Proposed Rule 902(b)(2) would have provided: ''If the security-based swap was executed on or after 23:00 UTC and up to 05:00 UTC of the following day, the transaction report (including the transaction ID and the full notional size) shall be disseminated at 13:00 UTC of that following day.'' Those block trades executed at the end of each window would receive an 8 hour dissemination delay and those blocks executed at 5:00 UTC would receive a 26 hour dissemination delay. The delay for all other block trades would vary between 8 and 26 hours, depending on the time of execution.

[496] *See* FINRA Letter at 2 (supporting the Commission's proposal to require reporting as soon as technologically practicable, but in no event later than 15 minutes after the time of execution); Barnard I at 3 (recommending full post-trade transparency as soon as technologically and practicably feasible, with an exemption permitting delayed reporting for block trades).

[497] *See* DTCC II at 9–10; ICI I at 4–5; ISDA III at 1 (''Not all market participants have the ability to report within 15 or 30 minutes of execution''); MarkitSERV I at 9 (''complying with a strict 15-minute deadline even for non-electronically executed or confirmed trades will require significant additional implementation efforts by the industry at a time when resources are already stretched in order to meet other requirements under the [Dodd-Frank Act]''); MFA I at 5.

[498] *See* MFA I at 5.

[499] ICI I at 4.

[500] *See* Barnard I at 4; CCMR I at 2; Cleary II at 18–21; DTCC II at 9–10, 24–25; DTCC III at 10; DTCC IV at 8–9; Roundtable Letter at 4–9; FINRA Letter at 4–5; Institutional Investors Letter at 3; ISDA/SIFMA I at 9–10; ISDA/SIFMA Block Trade Study at 2, 7; MarkitSERV I at 9–10; MFA Recommended Timeline at 1; UBS Letter at 2–3; WMBAA III at 4–6. Based on its experience with industry-wide processes, one commenter suggested that there could be a ''shake-out'' period during which problems with reported data could surface. The commenter urged the Commission to consider this possibility and provide a means to assure that information is of high quality before dissemination is permitted. *See* DTCC II at 9–10.

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

[502] *See* CCMR I at 2; Cleary II at 19; ISDA/SIFMA Block Trade Study at 2; UBS Letter at 2.

[503] *See* ICI I at 3; SIFMA I at 5 (''a 24-hour delay would better ensure that block liquidity providers are able to offset their risk regardless of the time during the trading day at which the block is executed''); Vanguard Letter at 4; Viola Letter at 2 (''At a minimum, the data in question should be delayed from the public reporting requirements at least one (1) day after the trade date''). *Cf.* Phoenix Letter at 4 (recommending end-of-day dissemination of block trades).

[504] *See* ISDA IV at 16.

[505] *See* ICI I at 3–4; Vanguard Letter at 4, note 3.

[506] *See* Better Markets I at 5–6 and at 4–5 (stating that no compelling economic justification exists for delaying the immediate public dissemination of any data regarding block trades, and that the minimum duration of any delay in reporting block trades

Continued

several commenters opposed two-part transaction reporting for block trades. These commenters believed that *all* information about a block trade, including the notional amount of the transaction, should be subject to a dissemination delay to provide liquidity providers with adequate time to hedge their positions.[507] Two commenters recommended initially setting block sizes low and over time collecting data to determine an appropriate block trade size.[508]

In addition, Commission staff has undertaken an analysis of the inventory management of dealers in the market for single-name CDS based on transaction data from DTCC–TIW.[509] The analysis, in line with prior studies of hedging in this market,[510] shows that, after most large transactions between a dealer and customer are executed, dealers do not appear to hedge resulting exposures by executing offsetting transactions (either with other dealers or other customers) in the same single-name CDS. In instances where dealers appear to hedge resulting exposures following a large trade in single-name CDS written on the same reference entity, they generally do so within a maximum of 24 hours after executing the original trade.

One commenter responded to this analysis, asserting that dealers, rather than hedging security-based swap exposures using offsetting transactions in the same instruments, might choose instead to hedge their security-based swap exposures in related assets, and that these types of hedging behaviors were not measured in the Commission staff analysis. The commenter further suggested that the use of cross-market hedges could be particularly important for transactions in single-name CDS that are especially illiquid.[511] The Commission acknowledges that the staff's analysis was limited to same-instrument hedging.[512] However, the Commission notes that, to the extent that security-based swap positions can be hedged using other assets—as the commenter suggests—these additional opportunities would suggest that dealers would likely need less time to hedge than if hedging opportunities existed only within the security-based swap market.

In view of these comments and the staff analysis, the Commission is modifying Regulation SBSR's timeframes for reporting security-based swap transaction information as follows. First, Rules 901(c) and 901(d), as adopted, require reporting sides to report the information enumerated in those rules ''within the timeframe specified in paragraph (j) of this section''—*i.e.,* by Rule 901(j). Rule 901(j), as adopted, provides that the reporting timeframe for Rules 901(c) and 901(d) shall be ''within 24 hours after the time of execution (or acceptance for clearing in the case of a security-based swap that is subject to regulatory reporting and public dissemination solely by operation of § 242.908(a)(1)(ii)), or, if 24 hours after the time of execution or acceptance for clearing, as applicable, would fall on a day that is not a business day, by the same time on the next day that is a business day.'' Under Rule 902(a), as adopted, the registered SDR that receives the transaction report from the reporting side is required, as proposed and re-proposed, to publicly disseminate a report of that transaction immediately upon receipt. The Commission believes that this approach will improve post-trade transparency and respond to commenters' concerns. In particular, the Commission believes that this approach addresses concerns relating to potential market impact, the ability to report in real time, and the length of delay for dissemination of block trade information.[513] Thus, the T+24 hour approach is designed to improve post-trade transparency in the security-based swap market in the near term, while generating additional data that the Commission can evaluate in considering appropriate treatment of block trades.

At this time, the Commission is not adopting the provisions of proposed and re-proposed Rule 902 that would have provided for real-time public dissemination of non-block trades. However, the Commission is adopting, substantially as proposed and re-proposed, what was originally designed to be the second wave of block dissemination—*i.e.,* disseminating the full trade details, including the true notional amount, at one of two points in the day (either 07:00 or 13:00 UTC) after an initial report of the transaction (without the notional amount) had been disseminated in real time.[514] The Commission is now simplifying that approach by eliminating the idea of ''batch dissemination'' at two points during the day, and instead allowing for T+24 hour reporting for all transactions, regardless of the time of execution. Furthermore, in the absence of a standard to differentiate block from non-block transactions, the Commission believes that it is appropriate to require the same T+24 hour reporting for all transactions.[515]

This interim phase is designed to allow the accumulation of empirical

should be ''far shorter'' than the delays included in Regulation SBSR); Better Markets III at 4–5; SDMA Letter at 2.

[507] *See* Cleary II at 12 (even without disclosure of the notional amount, observers may be able to infer information about a trade and predict subsequent hedging activity); Goldman Sachs Letter at 6 (disclosure of the fact that a block trade occurred could still impact liquidity); ICI I at 2 (recommending a delay of all block trade information); ISDA/SIFMA I at 3 (delaying disclosure of notional amount is only a ''partial solution''); SIFMA I at 3–4 (all block trade information should be delayed, otherwise immediate trade signaling could harm end users); Vanguard Letter at 2, 4 (all block trades should be delayed 24 hours, and establishment of a block regime should be delayed until the Commission has had time to assess how reporting affects the market).

[508] *See* Institutional Investors Letter at 4; MFA Recommended Timeline at 4.

[509] *See* Hedging Analysis.

[510] *See* Kathryn Chen, *et al.,* Federal Reserve Bank of New York Staff Report, *An Analysis of CDS Transactions: Implications for Public Reporting* (September 2011), available at *http://www.newyorkfed.org/research/staff_reports/sr517.html*, last visited September 22, 2014. *See also http://www.dtcc.com/repository-otc-data.aspx*, last visited September 22, 2014. This study uses an earlier sample of DTCC–TIW transaction data to identify hedging of transactions in single-name CDS. They find little evidence of hedging via offsetting trades in the same instrument and conclude by saying that ''requiring same day reporting of CDS trading activity may not significantly disrupt same day hedging activity, since little such activity occurs in the same instrument.''

[511] *See* ISDA IV at 15 (stating that ''participants may enter into risk mitigating transactions using other products that are more readily available at the time of the initial trade (for example CD index product [*sic*], CDS in related reference entities, bonds or loans issued by the reference entity or a related entity, equities or equity options)''). In addition, the commenter stated that it ''interprets the data in the study to imply that such temporary hedges in other asset classes (rather than offsetting transactions in the precise reference entity originally traded) are the norm for an illiquid market.'' *See id.*

[512] *See* Chen *et al., supra* note 510, at 6. Like the Chen *et al.* report, which was cited by the commenter, the Commission staff analysis did not incorporate data that would allow it to identify hedging in corporate bonds or equities, because appropriate data were not available. The commenter did not provide any analysis, rationale, or data demonstrating how public dissemination of a single-name CDS transaction within 24 hours would negatively impact a dealer from being able to hedge this exposure in another market, such as a broad-based CDS index.

[513] Although two commenters advocated shorter block trade delays, the Commission believes that it would be prudent to allow for the accumulation of additional data about the effect of post-trade transparency on the security-based swap market before considering shorter reporting and dissemination timeframes for block trades. The Commission may consider shorter timeframes in the future but believes that it is neither necessary nor appropriate to adopt these commenters' recommendations at this time.

[514] *See* Rule 902(b), as proposed and re-proposed.

[515] As discussed in more detail in Section VII(B)(3), *infra,* if 24 hours after the time of execution would fall on a non-business day (*i.e.,* a Saturday, Sunday, or U.S. federal holiday), reporting would instead be required by the same time on the next business day.

data and is consistent with various comments that emphasized the need for further study and analysis of empirical data prior to establishing block trading rules.[516] Several commenters noted that implementing the rules requiring reporting to registered SDRs prior to the block trading rules would provide security-based swap transaction data (in addition to historical data) that could be used in the formation of block trade thresholds.[517] One of these commenters stated, for example, that it would be premature to adopt block trade thresholds prior to the commencement of reporting to registered SDRs because SDR reporting would increase the amount of information available across various markets and asset classes.[518] Commenters also recommended several methods for obtaining and analyzing empirical data,[519] including independent academic research[520] and a review of a statistically significant data set for each security-based swap category.[521]

Although more data and analyses about executed transactions are now available than when the Commission originally issued the Regulation SBSR Proposing Release,[522] these data provide limited insights into how post-trade transparency might affect market behavior if executed transactions were to become publicly known on a real-time or near-real-time basis.[523] The Commission has information from DTCC–TIW about most CDS trades over the past few years [524] and can analyze the frequency of execution and the notional trade sizes. However, the Commission believes that these data permit only speculative inferences about the potential market impact of those trades being made public. Currently, there is little post-trade transparency in the security-based swap market, so the current trading generally is informed only imperfectly, if at all, about earlier trading.

Several aspects of the Commission's adopted rules are designed to help facilitate the collection of data relating to how post-trade transparency affects market behavior. The Commission is adopting, as re-proposed, the requirement that the trade report include the time of execution and the requirement that the registered SDR mark the time that it receives the trade report. These requirements are designed to help inform the Commission as to the length of time between the execution of a transaction and when the transaction is reported to a registered SDR, which should provide useful data to the Commission in analyzing trends in reporting timeframes. These timeframes would provide some insight into the beliefs of market participants regarding the length of the reporting delay that they deem necessary to minimize the market impact of a transaction. Observing trades being reported to a registered SDR with varying delays after execution could provide the Commission with greater insight as to what market participants consider to be market-impacting trades. Further, the Commission believes that this approach would address, during the interim phase, the concerns of the commenters who believed that a public dissemination regime with inappropriately low block trade thresholds could harm market liquidity, and those who argued that market participants would need an extended period of time to comply with the requirements to report within shorter timeframes.

Although any participant could take the full 24 hours to report a given trade, there may be incentives to submit trade reports in substantially less than 24 hours. The Commission understands that, in some cases, entities that are likely to become SB SEFs (''pre-SEFs'') may want to broadcast trades executed electronically across their platforms to all subscribers in order to catalyze trading by other counterparties at the same price.[525] This ''work-up'' process, according to a commenter, is designed to foster liquidity in the security-based swap market and to facilitate the execution of larger-sized transactions.[526] If pre-SEFs and their participants want to continue their current practices and broadcast a subset of their executed trades across the platform in real time to facilitate work-ups, they will be subject to Rule 902(d), which embargos transaction information until the information is transmitted to a registered SDR.[527] Therefore, any pre-SEF or user of a pre-SEF that wants to continue to have real-time information about a completed trade broadcast as part of a work-up must ensure that the initial transaction is reported to a registered SDR no later than the time at which it is broadcast to users of the pre-SEF.

In response to commenters who advocated shorter reporting time frames or block trade delays, the Commission notes that it anticipates further refining the reporting timeframes when it proposes and implements final block

[516] *See* ABC Letter at 7–8; CCMR I at 4 (''The Commission should set the thresholds low at first in order to collect data that will enable them to make informed decisions about the final delay and threshold determinations''); Institutional Investors Letter at 4–5 (stating, in reference to the CFTC's proposed rules, that the marketplace currently lacks sufficient collection and analysis of swap trading data to establish block trade thresholds); ICI II at 8 (''We agree with the SEC that it should defer its proposed rulemaking regarding block thresholds until after SDRs register with the SEC and the SEC begins to receive and analyze data required to be reported under the final rules or until after SB swap transaction information begins to be publicly reported''); MFA I at 4 (recommending that the Commission study and obtain empirical evidence to determine block trade definitions for each asset class to assure that the final rules do not disrupt the markets or reduce liquidity); ISDA/SIFMA I at 4–5 (recommending significant detailed research, including independent academic research, before determining block size thresholds and reporting delays for particular security-based swap transactions); ISDA/SIFMA II at 8 (stating that market-based research and analysis should be employed to provide the basis for the determination of well-calibrated block trading exemption rules); SIFMA II at 8 (''Until a liquid SBS trading market develops on SB–SEFs and exchanges, the Commission will not be able to make informed decisions on the definition of a block or an appropriate public reporting time frame. For the same reason, real-time reporting should be implemented gradually. Block trade thresholds should be set at a low level at first, such that many trades are treated as blocks, and raised slowly by the Commission when doing so is supported by market data''). *But see* SDMA Letter at 3 (stating that swap transaction data are available today and block trade thresholds could be established without delay).

[517] *See* Institutional Investors Letter at 4 (recommending that the CFTC collect market data for one year before adopting rules relating to block trades); MFA II, Recommended Timeline at 4; WMBAA III at 6; FIA/FSF/ISDA/SIFMA Letter at 6.

[518] *See* FIA/FSF/ISDA/SIFMA Letter at 6, note 6.

[519] *See* ISDA/SIFMA I at 4; Goldman Sachs Letter at 5.

[520] *See* ISDA/SIFMA I at 4.

[521] *See* Goldman Sachs Letter at 5 (stating that the Commission could obtain the necessary data by asking large dealers to provide information on a confidential basis and supplementing that information with data obtained from a survey of other market participants).

[522] *See, e.g.,* Chen *et al., supra* note 510.

[523] *See* ICI II at 8 (''Any data on which the SEC could rely currently to develop a methodology for determining minimum block trade sizes will not adequately represent or reflect the swaps market once the Dodd-Frank requirements (including public reporting of swap data) are fully implemented''). Two commenters pointed to evidence suggesting negative effects of post-trade transparency in other securities markets. *See* ISDA/SIFMA Block Trade Study at 4–5 (stating that some studies had concluded that transparency had negatively impacted markets, including the Canadian stock markets and the London Stock Exchange); J.P. Morgan Letter at 2–4 (stating that anecdotal evidence reported in one study supported the view that institutional customers experienced less deep markets as a result of TRACE reporting, and that adverse impacts could be more substantial for CDS).

[524] *See http://www.dtcc.com/repository-otc-data.aspx* (last visited September 22, 2014) for a description of aggregated data disseminated by DTCC. *See also infra* Section XXII(B)(1) for a description of transaction data obtained by the Commission.

[525] *See supra* Section VI(F) (discussing Embargo Rule).

[526] *See* GFI Letter at 3.

[527] *See supra* Section VI(F).

trade rules, at which point reporting sides will have had more time to test and implement their reporting systems and processes. This approach was recommended by several commenters.[528]

2. Reporting Timeframe for Trades Executed Prior to Weekends or U.S. Federal Holidays

While most transactions will have 24 hours within which to be reported, Rule 901(j) also provides that, ''if 24 hours after the time of execution would fall on a day that is not a business day, [the transaction must be reported] by the same time on the next day that is a business day.'' The Commission's intent is to afford security-based swap counterparties—during the interim phase—the equivalent of at least an entire business day to hedge their positions, if they so desire, before the transaction must be reported and publicly disseminated. Without clarifying that, during the interim phase, reporting requirements fall only on business days, for a transaction executed on the day before a weekend or holiday, the counterparties would have less than the number of business hours of a regular business day to hedge a transaction if reporting were required within 24 hours of execution.

The Commission is also adopting a definition of ''business day'' to clarify the ''not a business day'' provision. ''Business day'' is defined in Rule 900(f) as ''a day, based on U.S. Eastern Time, other than a Saturday, Sunday, or a U.S. federal holiday.'' Counterparties to the trade may be in different time zones and/or jurisdictions; in the absence of Rule 900(f) there could be confusion about whether the ''not a business day'' provision referred to the jurisdiction and time zone of one side or the jurisdiction and time zone of the other. Because Regulation SBSR is designed to implement Title VII's regulatory reporting and public dissemination requirements for the U.S. security-based swap market, the Commission is designating U.S. Eastern Time (which may be either Eastern Standard Time or Eastern Daylight Time) as the time zone on which the reporting side should base its reporting for purposes of Rules 900(f) and 901(j). The Commission also is excluding U.S. federal holidays from the definition of ''business day.'' The following examples are designed to help explain the application of this provision:

- *Example 1.* A trader executes a trade at 04:59 UTC on Friday (11:59 p.m. EST on Thursday). This particular Friday is not a U.S. federal holiday. The reporting side must report by 04:59 UTC on Saturday (11:59 p.m. EST on Friday).
- *Example 2.* A trader executes a trade at 05:01 UTC on Friday (12:01 a.m. EST on Friday). The reporting side must report by 05:01 UTC on Monday (12:01 a.m. EST on Monday), provided that this particular Monday is not a U.S. federal holiday.
- *Example 3.* A trader executes a trade at 14:42 UTC on Friday (9:42 a.m. EST on Friday). The reporting side must report by 14:42 UTC on Monday (9:42 a.m. EST on Monday), provided that this particular Monday is not a U.S. federal holiday.
- *Example 4.* A trader executes a trade at 13:42 UTC on Friday (9:42 a.m. EDT on Friday). The following Monday is Labor Day, a U.S. federal holiday. The reporting party must report by 13:42 UTC on Tuesday (9:42 a.m. EDT on Tuesday).
- *Example 5.* A trader executes a trade at 16:45 UTC on Wednesday, November 26, 2014 (11:45 a.m. EST on Wednesday, November 26, 2014). Thursday, November 27, 2014 is Thanksgiving, a U.S. federal holiday. The reporting party must report by 16:45 UTC on Friday, November 28, 2014 (11:45 a.m. EST on Friday, November 28, 2014).
- *Example 6.* A trader executes a trade at 16:45 UTC on a Wednesday (11:45 a.m. EST on Wednesday). Thursday is not a U.S. federal holiday, but a large blizzard causes emergency closures in New York City and several other U.S. cities. The reporting party must report by 16:45 UTC on Thursday (11:45 a.m. EST on Thursday).

3. Other Revisions To Accommodate the Interim Phase

In addition to the changes noted above, the Commission is adopting the following technical changes to Regulation SBSR to implement the interim phase of reporting and public dissemination. First, the Commission is not adopting certain sections of rule text that referred to block trades and marking those sections as ''Reserved.'' Rule 900(c), as re-proposed, would have defined a ''block trade'' as a large notional security-based swap transaction that meets the criteria set forth in proposed Rule 907(b). Rule 907(b), as proposed and re-proposed, would have required a registered SDR to establish and maintain policies and procedures ''for calculating and publicizing block trade thresholds for all security-based swap instruments reported to the registered security-based swap data repository in accordance with the criteria and formula for determining block size as specified by the Commission.'' Rule 907(b), as proposed and re-proposed, also would have excluded equity TRS instruments and any security-based swap contemplated by Section 13(m)(1)(C)(iv) of the Exchange Act[529] from the definition of ''block trade.'' Because the Commission anticipates soliciting public comment on block thresholds and other rules related to block trades—including what role (if any) registered SDRs should play in calculating those thresholds—the Commission is not at this time defining the term ''block trade'' in Rule 900(c) or adopting Rule 907(b). Similarly, because the Commission is not at this time adopting the requirement to report in real time, the Commission is not adopting a definition of ''real time'' in Rule 900.

Second, the Commission has determined not to utilize the term ''security-based swap instrument''[530] in Regulation SBSR. The Commission devised the original definition of ''security-based swap instrument'' in connection with its overall analysis of the block trade issue. In the Regulation SBSR Proposing Release, the Commission stated its preliminary belief that it would not be appropriate to establish different block trade thresholds for similar instruments with different maturities. Thus, the proposed definition of ''security-based swap instrument'' did not include any distinction based on tenor or date until expiration.[531]

One commenter discussed the concept of security-based swap instruments in the context of its overall discussion of block trade issues.[532] The commenter argued that a different block size threshold would have to be

[528] *See* Institutional Investors Letter at 4 (recommending that the CFTC collect market data for one year before adopting rules relating to block trades); MFA II, Recommended Timeline at 4; WMBAA III at 6; FIA/FSF/ISDA/SIFMA Letter at 6 (appropriate block trade thresholds, and therefore real-time reporting requirements, can be established only after the commencement of SDR reporting to regulators and careful analysis of security-based swap market transaction data). This approach is also broadly consistent with the implementation of the TRACE system, which shortened reporting requirements over time. Several commenters recommended a phased reporting approach analogous to TRACE. *See* CCMR I at 2; Cleary II at 20; DTCC II at 9–10; FINRA Letter at 4–5; ISDA/SIFMA I at 10; ISDA/SIFMA Block Trade Study at 2; UBS Letter at 2–3; WMBAA II at 5.

[529] 15 U.S.C. 78m(m)(1)(C)(iv).

[530] Proposed Rule 900 would have defined ''security-based swap instrument'' to mean ''each security-based swap in the same asset class, with the same underlying reference asset, reference issuer, or reference index.'' This definition was included, without change, in re-proposed Rule 900(dd).

[531] *See* 75 FR 75231.

[532] *See* CCMR I at 3.

calculated for each category of security-based swap instrument, so the boundaries of those categories would greatly impact market participants' ability to engage in block trading. The commenter recommended, therefore, that instruments be classified in as few categories as possible.[533] Another commenter argued that the definition of ''security-based swap instrument'' ''should provide for more granular distinctions between different types of transaction within a single asset class to avoid grouping together transactions with quite different characteristics.'' [534]

The Commission anticipates soliciting public comment on block trade thresholds at a later date. Because the initial intent of the term ''security-based swap instrument'' was to delineate separate categories of security-based swaps that could have separate block trade thresholds, the Commission is not adopting the term ''security-based swap instrument'' at this time. The Commission anticipates soliciting public comment on whether and how to establish different categories of security-based swaps—and what, if any, block thresholds and dissemination delays will apply to those different categories—when it solicits comment on block thresholds.

Further, proposed Rule 902(b) would have specified the delay for dissemination of certain information about block trades to the public as well as what information a registered SDR should disseminate immediately. Because the Commission anticipates that it will re-propose all aspects of Regulation SBSR as they pertain to block trades, the Commission is not adopting Rule 902(b) at this time.

Rules 901(j), as adopted, require the reporting of both primary and secondary trade information, respectively, for a security-based swap no later than 24 hours after the time of execution (or acceptance for clearing in the case of a security-based swap that is subject to regulatory reporting and public dissemination solely by operation of Rule 908(a)(1)(ii)), or, if 24 hours after the time of execution or acceptance for clearing, as applicable, would fall on a day that is not a business day, by the same time on the next day that is a business day. Re-proposed Rule 901(d)(2) would have required the reporting side to report what final Rule 901(d) now terms the ''secondary trade information'' promptly, but in any event, no later than: (1) 15 minutes after the time of execution for a security-based swap that is executed and confirmed electronically; (2) 30 minutes after the time of execution for a security-based swap that is confirmed electronically but not executed electronically; or (3) 24 hours after the time of execution for a security-based swap that is not executed or confirmed electronically. In proposing these reporting timeframes, the Commission recognized that the amount of time required for counterparties to report the information required under proposed Rule 901(d)(1) depended upon, among other things, the extent to which the security-based swap was customized and whether the security-based swap was executed or confirmed electronically or manually.[535]

Generally, commenters' views regarding the regulatory reporting timeframes in proposed Rule 901(d)(2) were mixed. While some commenters expressed concerns that the proposed timeframes were too lenient or incentivized slower technologies,[536] other commenters expressed the view that the reporting timeframes in proposed Rule 901(d)(2) were not practicable.[537] One of these commenters noted the likelihood of errors if reporting timeframes were too short.[538] Another commenter urged the Commission to strike an appropriate balance between speed and accuracy in establishing timeframes for regulatory reporting.[539] One commenter suggested that, initially, the Rule 901(d) regulatory reporting timeframes should be set closer to current market capability, with electronically confirmable trades reported within 24 hours.[540] This commenter recommended a phase-in period to allow reporting parties to develop the necessary reporting capabilities, after which time shorter timeframes could be implemented.[541]

The Commission is not adopting the reporting timeframes proposed in Rule 901(d)(2), and is therefore renumbering Rule 901(d)(1) as Rule 901(d).[542] Because Rule 901(j), as adopted, allows reporting sides up to 24 hours to report the primary trade information pursuant to Rule 901(c) (or until the same time on the next business day if the trade occurs less than 24 hours before a weekend or federal holiday), the Commission believes that it is appropriate also to modify the timeframe for reporting the secondary trade information set forth in Rule 901(d) to harmonize with the Rule 901(c) requirement. Although both the primary and secondary trade information must be reported within 24 hours of the time of execution or acceptance for clearing, as applicable (or until the same time on the next business day if the trade occurs less than 24 hours before a weekend or federal holiday), Rule 901 does not require that all of the information enumerated in Rules 901(c) and 901(d) be provided in a single trade report. Thus, a reporting side could, if permitted by the policies and procedures of the relevant registered SDR, make an initial report of the primary trade information followed by a subsequent report containing secondary trade information, so long as both reports were provided within the timeframe prescribed by Rule 901(j).[543]

The Commission acknowledges the issues raised by the commenters regarding the proposed reporting timeframes, and, in particular, the concerns that unreasonably short reporting timeframes would result in the submission of inaccurate transaction information. The Commission believes that the 24-hour reporting timeframe being adopted in Rule 901(j) strikes an appropriate balance, for the interim phase, between the need for prompt reporting of security-based swap transaction information and allowing

[533] *See id.*

[534] ISDA/SIFMA I at 10.

[535] *See* Regulation SBSR Proposing Release, 75 FR 75219. The Commission believed that the information required under Rule 901(d)(1) would be available relatively quickly for a security-based swap that was executed and confirmed electronically because most of the required information would already be in an electronic format. On the other hand, the Commission recognized that, for security-based swaps that are not executed or confirmed electronically, additional time might be needed to systematize the information required under Rule 901(d)(1) and put it into the appropriate format. *See id.*

[536] *See* Better Markets I at 9 (noting that technology that would permit reporting within much shorter timeframes is widely available, and that market participants routinely adhere to much shorter timeframes for their own business and internal reporting); Tradeweb Letter at 5 (different reporting timeframes based on the method of execution potentially could create incentives for market participants not to take advantage of available technology); SDMA I at 3 (stating, with reference to the CFTC's proposed rules, that different reporting timeframes based on method of execution could create a 'race to the slowest' among swap execution facilities, with market participants favoring slower-reporting swap execution facilities over more efficient and transparent facilities).

[537] *See* MFA Letter at 5; DTCC II at 12.

[538] *See* MFA Letter at 5.

[539] *See* ISDA/SIFMA I at 9.

[540] *See* DTCC II at 12.

[541] *See id.*

[542] *See supra* Section II(C)(2).

[543] However, the registered SDR's policies and procedures adopted under Rule 907(a)(1) generally should explain to reporting sides how to report if all the security-based swap transaction data required by Rules 901(c) and 901(d) is being reported simultaneously, and how to report if responsive data are being provided at separate times. In the latter case, the registered SDR should provide the reporting side with the transaction ID after the reporting side reports the information required by Rule 901(c). The reporting side would then include the transaction ID with its submission of data required by Rule 901(d), thereby allowing the registered SDR to match the Rule 901(c) report with the subsequent Rule 901(d) report.

reporting entities sufficient time to develop fast and robust reporting capability. The Commission notes that some commenters supported a 24-hour reporting timeframe as consistent with existing industry reporting capability,[544] and believes that this timeframe addresses commenters' concerns that some elements of the required information might not be available within the initially proposed reporting timeframes.[545]

Finally, Rule 901(d)(2), as proposed and re-proposed, would have established reporting timeframes based on whether a security-based swap is executed and/or confirmed electronically. The term ''confirm'' appeared only in Rule 901(d)(2), as proposed and re-proposed.[546] Because this term does not appear in Rule 901(d)(2), as adopted, the Commission has determined not to adopt a definition for the term ''confirm'' in final Rule 900.[547]

4. Dissemination of Notional Amount

The Commission is mindful of comments expressing concern about dissemination of the full notional amount for block trades.[548] For example, two commenters expressed the view that disseminating the notional amount of a block trade could jeopardize the anonymity of the counterparties.[549] One commenter, who noted that TRACE never requires the dissemination of the exact notional amount of block transactions, suggested that the Commission had not fully explained its rationale for not adopting this approach for security-based swaps.[550] Numerous commenters supported dissemination of the notional amount of block trades through a ''masking'' or ''size plus'' convention comparable to that used by TRACE, in which transactions larger than a specified size would be reported as ''size plus.'' [551]

Under Rule 902(a), as adopted, a registered SDR is required to publicly disseminate (for all dissemination-eligible transactions [552]), immediately upon receipt of the transaction report, all of the elements required by Rule 901(c), including the true notional amount of the transaction (as opposed to a ''capped'' or ''bucketed'' notional amount). The Commission believes the T+24 hour approach during the interim phase should address commenters' concerns about disseminating the true notional amount of a transaction, including concerns about preserving the anonymity of counterparties.[553] One commenter expressed concern about reporting blocks and non-blocks in the same timeframe, which, the commenter stated, would prevent market participants from being able to hedge the trade.[554] The Commission believes that a 24-hour timeframe for reporting of transaction information should address any concerns about disseminating the true notional amount of any transaction and allow market participants who choose to hedge adequate time to accomplish a majority of their hedging activity before transaction data is publicly disseminated.[555] During the interim phase when no transaction must be reported in less than 24 hours after execution, the Commission will be able to collect and analyze transaction information to develop an understanding of how market participants are reacting to the introduction of mandated post-trade transparency. The Commission expects to study, among other things, the frequency with which security-based swap market participants transact in non-standard notional amounts, and will attempt to observe whether the market reacts differently to last-sale prints of any non-standard sizes versus more conventional sizes. Based on such data and analysis, the Commission anticipates considering whether it may be appropriate to establish notional caps or rounding conventions in disseminated reports.

5. Analysis Period

As discussed in Section XXII(C)(3)(a), *infra,* during the interim phase, the Commission will have access to more useful data about how different security-based swap trades of different sizes and with different reporting delays might be affecting subsequent behavior in the market, as well as any additional data and analysis that might be submitted by third parties.[556] Furthermore, once implemented, reporting sides will be required under Regulation SBSR to submit their security-based swap execution times to a registered SDR. As noted above, security-based swap transaction data currently stored in DTCC–TIW includes the time of reporting but not the time of the execution.[557] Having the execution time instead of only the reporting time will allow a more robust and granular analysis of any hedging that may or may not occur within the first 24-hour period after execution.

The Commission is directing its staff to use data collected during the interim phase to publish a report for each asset class of security-based swaps assessing the impact of post-trade transparency on that asset class. The Appendix to Rule 901 of Regulation SBSR sets forth the guidelines for these reports, which must be completed no later than two years following the initiation of public dissemination of SBS transaction data by the first registered SDR in each asset class.[558]

The completion of the staff's report for an asset class will mark the beginning of an analysis period, during which the Commission anticipates

[544] *See* DTCC II at 12; MFA at 5.

[545] *See* Cleary II at 15–16.

[546] Rule 900(e), as re-proposed, defined ''confirm'' as ''the production of a confirmation that is agreed to by the parties to be definitive and complete and that has been manually, electronically, or, by some other legally equivalent means, signed.''

[547] One commenter suggested that the Commission use the term ''issued,'' rather than ''confirm'' to better reflect existing market practice with respect to confirming the terms of a security-based swap. *See* ISDA IV at 10. The deletion of the term ''confirm'' from Regulation SBSR, as adopted, addresses this concern.

[548] *See* Cleary II at 13 (''we would recommend that the SEC gather further data on the costs and benefits of disclosing notional size before requiring such disclosure for all transactions''); ISDA/SIFMA I at 5 (size of a block trade transaction should not be disclosed at any time); ISDA/SIFMA II at 8 (same); ISDA/SIFMA Block Trade Study at 26–27 (noting that reporting of notional amounts of block trades will hamper the execution of large-sized trades and recommending dissemination of capped volume information); Phoenix Letter at 3; SIFMA I at 5; UBS Letter at 2 (arguing actual notional amount of an illiquid security-based swap would provide information to the market about potential hedging activity); WMBAA II at 7 (arguing that dissemination of the full notional amount could jeopardize the anonymity of counterparties to the trade).

[549] *See* WMBAA II at 7 (also noting that the result may be that counterparties are less willing to engage in large transactions); Phoenix Letter at 3 (stating that reporting block trades at the same time as non-block trades could jeopardize the anonymity of the block trade).

[550] *See* Cleary II at 13.

[551] *See* WMBAA II at 7; ISDA/SIFMA I at 5; ISDA/SIFMA Block Trade Study at 2, 26–27; Vanguard Letter at 5; Goldman Sachs Letter at 6; SIFMA I at 5; J.P. Morgan Letter at 12–13; MFA I at 4; MFA III at 8; UBS Letter at 2; FIA/FSF/ISDA/SIFMA Letter at 6; Phoenix Letter at 3; ISDA IV at 16.

[552] *See* Rule 902(c) (requiring that certain types of security-based swaps not be publicly disseminated).

[553] One commenter appears to agree generally with this approach. *See* J.P. Morgan Letter at 14 (''‘un-masked' trade-by-trade notional amounts should eventually be disseminated . . . in order to facilitate analysis of market trends by market participants and the academic community'').

[554] *See* Phoenix Letter at 3.

[555] The Commission further notes that equity total return swaps are synthetic substitutes for positions in the underlying equity security or securities; therefore, the Commission believes that it would not be appropriate to allow masking for a synthetic substitute when there is no masking exceptions to public dissemination in the cash equities markets.

[556] *See* ICI II at 7 (''We also support the SEC re-opening for comment certain issues related to block trades—such as the required time delays—in connection with the future SEC proposal regarding how to define block trades'').

[557] *See* Hedging Analysis at 5.

[558] *See infra* Section XXII(C)(3)(a) (describing the importance of conducting additional data analysis during the interim phase).

considering the report, any public comments received on the report, and any other relevant data and information, including the Commission's original proposal to define ''real time'' in the context of Section 13(m) of the Exchange Act to mean ''as soon as technologically practicable, but in no event later than 15 minutes after the time of execution of a security-based swap transaction.'' [559] Based on this analysis, the Commission anticipates that it will prepare a proposal that would address, among other things: (1) The criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts; and (2) the appropriate time delay for disseminating large notional security-based swap transactions (block trades) to the public.[560] The Commission believes that the approach of studying security-based swap market activity once post-trade transparency is implemented, but before adopting block trade rules, accords with the recommendations of several commenters.[561]

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

This section explains the application of Regulation SBSR to certain security-based swaps executed by an asset manager on behalf of multiple clients—transactions involving what are sometimes referred to as ''bunched orders.'' [562] To execute a bunched order, an asset manager negotiates and executes a security-based swap with a counterparty, typically a security-based swap dealer, on behalf of multiple clients. The bunched order could be executed on- or off-platform. The asset manager would allocate a fractional amount of the aggregate notional amount of the transaction to each client, either at the time of execution or some time after execution. Allocation results in the termination of the executed bunched order and the creation of new security-based swaps between the security-based swap dealer and the accounts managed by the asset manager.[563] By executing a bunched order, the asset manager avoids having to negotiate the account-level transactions individually, and obtains exposure for each account on the same terms (except, perhaps, for size).

A. Discussion of Comments Received and Application of Regulation SBSR

In response to the Regulation SBSR Proposing Release, one commenter stated that asset managers commonly use bunched orders and allocations in the OTC derivatives market, and recommended that publicly disseminating the execution of a bunched order—without the allocation information—would satisfy the transparency objective of Title VII and be consistent with TRACE reporting.[564] The commenter also expressed the view that the reporting party for a bunched order execution should be obligated to report allocation information, which would be necessary to indicate the final placement of risk derived from the initial trade.[565] The discussion below explains how Regulation SBSR's regulatory reporting and public dissemination requirements apply to executed bunched orders that are subject to the reporting hierarchy in Rule 901(a)(2)(ii) and the security-based swaps that result from the allocation of these transactions, to the extent that the resulting security-based swaps are not cleared. The Regulation SBSR Proposed Amendments Release is proposing guidance for reporting platform-executed bunched orders that will be submitted to clearing and security-based swaps that result from the allocation of a bunched order if the resulting security-based swaps are cleared.

Regulation SBSR requires bunched order executions to be reported like other security-based swaps. The reporting side for a bunched order execution subject to the reporting hierarchy in Rule 901(a)(2)(ii) [566] must report the information required by Rules 901(c) and 901(d) for the bunched order execution, including the notional amount of the bunched order execution, to a registered SDR.[567] The information described in final Rule 901(c) will be publicly disseminated under final Rule 902(a), like any other security-based swap transaction that does not fall within the enumerated exceptions to public dissemination in Rule 902(c).[568] The Commission believes that it is appropriate to enhance price discovery, and thus consistent with the statutory provisions governing public dissemination of security-based swaps, to require public dissemination of a single transaction report showing the aggregate notional amount of the bunched order execution (*i.e.,* the size

[559] *See* Regulation SBSR Proposing Release, 75 FR 75284.

[560] *See* 15 U.S.C. 78m(m)(1)(E)(ii)–(iii). The Commission anticipates that these proposed rules also would address certain issues raised by commenters during the comment period for Regulation SBSR. For example, several commenters proposed calculation methodologies for block trade thresholds. *See, e.g.,* Goldman Sachs Letter at 4–6; ISDA/SIFMA I at 4; Better Markets I at 6; WMBAA II at 3; ISDA/SIFMA Block Trade Study at 26; Cleary II at 14 (supporting various tests or methodologies for establishing block trade thresholds). Commenters suggested various approaches for how often block thresholds should be updated. *See* ISDA/SIFMA I at 5 (stating that block trade thresholds should be updated at least every three months because liquidity in the OTC markets may change quickly); ISDA/SIFMA II at 8 (stating that the block trading exemption rules should be updated quarterly); ISDA/SIFMA Block Trade Study at 2 (stating that the reporting rules should be re-evaluated regularly to ensure that they reflect the changing characteristics of the market); ICI I at 3 (stating that block trade thresholds would need to be reviewed more than once a year to remain meaningful); WMBAA II at 5 (recommending that block trade thresholds be updated at appropriate intervals); MFA III at 8 (stating that an SB SEF's swap review committee should periodically determine what constitutes a ''block'' for each security-based swap or security-based swap class that the SF SEF trades). *See also* Barclays Letter at 5 (generally supporting a 30-calendar-day look-back for determining block size thresholds).

[561] *See* Institutional Investors Letter at 4 (recommending that the CFTC collect market data for one year before adopting rules relating to block trades); MFA II, Recommended Timeline at 4; WMBAA III at 6; FIA/FSF/ISDA/SIFMA Letter at 6 (appropriate block trade thresholds, and therefore real-time reporting requirements, can be established only after the commencement of SDR reporting to regulators and careful analysis of security-based swap market transaction data). This approach is also broadly consistent with the implementation of the TRACE system, which shortened reporting requirements over time. Several commenters recommended a phased reporting approach analogous to TRACE. *See* CCMR I at 2; Cleary II at 20; DTCC II at 9–10; FINRA Letter at 4–5; ISDA/SIFMA I at 10; ISDA/SIFMA Block Trade Study at 2; UBS Letter at 2–3; WMBAA II at 5.

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

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

[564] *See* ISDA/SIFMA I at 7–8. *See also* ISDA IV at 10, 13 (asserting that the bunched order execution could be disseminated publicly, but that post-allocation activities should be excluded from public dissemination).

[565] *See id.* at 8.

[566] *See supra* Section V. A bunched order execution will be subject to this reporting hierarchy unless it is executed on a platform and submitted to clearing.

[567] Rule 901(d)(1) requires the reporting side for a security-based swap to report ''the counterparty ID or the execution agent ID of each counterparty, as applicable.'' The Commission notes that an asset manager acts as an execution agent for the clients that receive allocations of an executed bunched order.

[568] *See supra* Section VI.

prior to allocation).[569] The public thereby will know the full size of the bunched order execution and that this size was negotiated at a single price. The reporting side for a bunched order execution also must report life cycle events for the bunched order execution—including the termination of the executed bunched order that result from its allocation—to the registered SDR that receives the initial report of the transaction.

When a bunched order execution is allocated, new security-based swaps are created that must be reported to a registered SDR pursuant to Rule 901(a). To clarify that point, the introductory language to final Rule 901(a) states that a ''security-based swap, including a security-based swap that results from the allocation, termination, novation, or assignment of another security-based swap, shall be reported'' as provided in the rest of the rule.[570] Reporting of the security-based swaps resulting from the allocation of a bunched order execution should assure that the Commission and other relevant authorities know the final placement of risk that results from the bunched order execution.[571] As with any other security-based swap, the reporting side for a security-based swap resulting from an allocation is determined by Rule 901(a). Also, as with any other security-based swap, the reporting side must make the required report within 24 hours of the time that the new security-based swap is created—not within 24 hours of the time of execution of the original bunched order.[572] Under Rule 901(d)(10), the reporting side for a security-based swap resulting from an allocation must report the transaction ID of the executed bunched order as part of the report of the new security-based swap.[573] This requirement will allow the Commission and other relevant authorities to link a report of a bunched order execution to the smaller security-based swaps that result from the allocation of the bunched order execution. Because these related transactions can be linked across registered SDRs using the transaction ID of the bunched order execution, the Commission believes that it is not necessary or appropriate to require that the security-based swaps resulting from the allocation be reported to the same registered SDR that received the transaction report of the original transaction.

The Commission agrees with the commenters who recommended that publicly disseminating the execution of a bunched order—without the allocation information—would satisfy the transparency objective of Title VII.[574] Therefore, Regulation SBSR does not require a registered SDR to publicly disseminate reports of the new security-based swaps that result from an allocation. In fact, as described above, Rule 902(c)(7), as adopted, prohibits a registered SDR from disseminating ''[a]ny information regarding the allocation of a security-based swap.'' [575] This approach also accords with the recommendation of the commenter who urged that the aggregate notional amount prior to allocation be disseminated, rather than the individual transaction sizes, in order to preserve anonymity of the asset manager and its clients.[576]

The Commission notes that Rule 907(a)(1), as adopted, requires a registered SDR to establish and maintain policies and procedures that, among other things, enumerate the specific data elements of a security-based swap that must be reported. Registered SDRs should consider describing, as part of these policies and procedures, the means by which persons with a duty to report bunched order executions—and the new security-based swaps that result from the allocation—must report the information required by Rules 901(c) and 901(d).

B. Example: Reporting and Public Dissemination for an Uncleared Bunched Order Execution

The following example demonstrates how Regulation SBSR applies to a bunched order execution that will not be cleared and the security-based swaps that result from the allocation of that bunched order execution. Assume that an asset manager, acting on behalf of several investment fund clients, executes a bunched order with a registered security-based swap dealer. Assume that the transaction is not submitted to clearing and there are no indirect counterparties on either side. The execution of the bunched order could occur either on a platform or not.

1. Reporting the Executed Bunched Order

Under Rule 901(a)(2)(ii), as adopted, the registered security-based swap dealer is the reporting side for the bunched order execution because only one side of the transaction includes a registered security-based swap dealer. Under final Rules 901(c) and 901(d), the registered security-based swap dealer has up to 24 hours after the time of execution of the bunched order to report all applicable primary and secondary trade information to a registered SDR. The registered security-based swap dealer must report the entire notional amount of the executed bunched order as part of the Rule 901(c) primary trade information.[577] Rule 902(a) requires the registered SDR to publicly disseminate a single last-sale print showing the aggregate notional amount of the bunched order execution immediately upon receiving the report from the registered security-based swap dealer.

2. Reporting the Allocations

Regulation SBSR also requires reporting to a registered SDR of the security-based swaps that result from allocation of the bunched order execution.[578] As the reporting side for the executed bunched order, the registered security-based swap dealer must make a life cycle event report, in accordance with Rule 901(e), to notify the registered SDR that received the report of the executed bunched order

[569] *See* 15 U.S.C. 13(m)(1)(B) (authorizing the Commission to make security-based swap transaction and pricing data available to the public ''in such form and at such times as the Commission determines appropriate to enhance price discovery'').

[570] *See supra* Section V(C)(5).

[571] As stated above, allocation also results in the termination of the bunched order execution, which is a life cycle event of the original transaction. This life cycle event must be reported, in accordance with Rule 901(e), to the registered SDR that receives the report of the original bunched order execution.

[572] If 24 hours after the time of allocation would fall on a day that is not a business day, the report of the security-based swaps resulting from the allocation would be due by the same time on the next day that is a business day. *See* Rule 901(j). One commenter requested that Regulation SBSR reflect that the timeframe for reporting security-based swaps resulting from a bunched order execution commence upon receipt of the identity of the counterparties to the bunched order execution by the reporting party during its own business hours. *See* ISDA IV at 10. The Commission believes that the requirement that the reporting side make the required report within 24 hours of the time that the new security-based swap is created is responsive to this comment.

[573] Rule 901(d)(10), as adopted, provides that, if a ''security-based swap arises from the allocation, termination, novation, or assignment of one or more existing security-based swaps,'' the reporting side must report ''the transaction ID of the allocated, terminated, assigned, or novated security-based swap(s),'' subject to one exception that would not apply to an allocation that is not submitted for clearing.

[574] *See* ISDA/SIFMA I at 7–8; ISDA IV at 10, 13.

[575] *See supra* Section VI(D).

[576] *See* MFA I at 2–3 (''Counterparties are often aware of an investment manager's standard fund allocation methodology and therefore, reporting transactions at the allocated level . . . will make evident an allocation scheme that other participants can easily associate with a particular investment manager'').

[577] *See* Rule 901(c)(4) (requiring reporting of the notional amount of a security-based swap and the currency in which the notional amount is denominated).

[578] *See* Rule 901(a) (requiring that a security-based swap, ''including a security-based swap that results from the allocation, termination, novation, or assignment of another security-based swap shall be reported'' as provided in the rest of the rule).

that the trade has been allocated, which terminates the security-based swap. Pursuant to Rule 901(a)(2)(ii), the registered security-based swap dealer also is the reporting side for each security-based swap resulting from allocation of the bunched order execution because only one side of the transaction includes a registered security-based swap dealer.[579] If the asset manager provides the allocation information to the registered security-based swap dealer prior to or contemporaneous with the bunched order execution, the registered security-based swap dealer could report the bunched order execution and the security-based swaps that result from its allocation to a registered SDR at the same time.[580] If the asset manager does not provide the allocation information to the registered security-based swap dealer until some time after execution of the bunched order, the registered security-based swap dealer must report each security-based swap resulting from the allocation within 24 hours of the allocation. In either case, the reports of the security-based swaps resulting from the allocation of the bunched order execution must include the counterparty IDs of each investment fund and the notional amount of each security-based swap resulting from the allocation. In either case, Rule 901(d)(10) requires each report of a security-based swap resulting from the allocation to include the transaction ID of the bunched order execution so that the Commission and other relevant authorities will have the ability to link each resulting transaction with the initial bunched order execution.

IX. Inter-Affiliate Security-Based Swaps

A. Background and Summary of Final Rule

Regulation SBSR, as initially proposed, did not contemplate any exception from reporting for inter-affiliate security-based swaps. In the Regulation SBSR Proposing Release, the Commission expressed the preliminary view that a report of an inter-affiliate security-based swap should be publicly disseminated with an indicator identifying the transaction as an inter-affiliate security-based swap.[581] The Commission noted that, for such transactions, ''there might not be an arm's length negotiation over the terms of the [security-based swap] transaction, and disseminating a report of the transaction without noting that fact would be inimical to price discovery.'' [582] Rule 907(a)(4), as proposed, would have required a registered SDR to establish and maintain written policies and procedures describing, among other things, how reporting parties would report—and consistent with the enhancement of price discovery, how the registered SDR would publicly disseminate—security-based swap transactions that do not involve an opportunity to negotiate any material terms, other than the counterparty.[583]

The Commission received several comments regarding inter-affiliate security-based swaps in response to the Regulation SBSR Proposing Release and discussed those comments in the Cross-Border Proposing Release.[584] Although the Cross-Border Proposing Release did not propose to revise any portion of Regulation SBSR with regard to the treatment of inter-affiliate security-based swaps, the Commission provided some preliminary thoughts on how Regulation SBSR could be applied to them, particularly as regards to public dissemination, in a manner that could address commenters' concerns without taking the step of suppressing all inter-affiliate transactions from public dissemination.[585] In response to the Cross-Border Proposing Release, the Commission received additional comments, described below, regarding the application of Regulation SBSR to inter-affiliate security-based swaps.

Regulation SBSR, as adopted, applies to all security-based swaps, including inter-affiliate security-based swaps. The Commission has considered, but is not adopting, any exemption from Regulation SBSR's regulatory reporting or public dissemination requirements for inter-affiliate security-based swaps. Therefore, Rules 901(c) and 901(d) require reporting of inter-affiliate security-based swaps; Rule 901(i) requires reporting of historical inter-affiliate security-based swaps; and Rule 902 requires public dissemination of inter-affiliate security-based swaps. Furthermore, Rule 907(a)(4) requires a registered SDR to establish and maintain policies and procedures that, among other things, identify characteristics of or circumstances associated with the execution or reporting of a security-based swap that could, in the fair and reasonable estimation of the registered SDR, cause a person without knowledge of such characteristics or circumstances to receive a distorted view of the market. As discussed in Section VI(G), *supra,* the Commission generally believes that a registered SDR should establish a flag for inter-affiliate security-based swaps to help market observers better understand the information that is publicly disseminated.

B. Discussion of Comments

1. Regulatory Reporting of Inter-Affiliate Security-Based Swaps

Most of the comments relating to inter-affiliate security-based swaps, in response to both the initial proposal and the Cross-Border Proposing Release (which re-proposed Regulation SBSR in its entirety), pertained to public dissemination. However, one commenter stated that, because inter-affiliate transactions should not be publicly disseminated, it also should be unnecessary to ''collect'' information about them.[586] Another commenter on the Regulation SBSR Proposing Release argued that, for a foreign entity registered as a bank holding company and subject to the consolidated supervision of the Federal Reserve System, the reporting of inter-affiliate transactions would be superfluous because the Federal Reserve has ''ample authority to monitor transactions among affiliates,'' [587] suggesting that even regulatory reporting of inter-affiliate security-based swaps should not be necessary.[588] In the Cross-Border Proposing Release, the Commission specifically asked whether commenters believed that cross-border inter-affiliate security-based swaps should be excluded from the regulatory reporting requirements of Regulation SBSR and, if so, under what circumstances such security-based swaps should be excluded.[589] No commenters on the Cross-Border Proposing Release responded to this particular question pertaining to regulatory reporting.

[579] The Commission assumes that the investment funds would not be registered security-based swap dealers for purposes of these examples.

[580] Even though the reports could be made at the same time, Rule 901(a) requires a report of a bunched order execution and an associated allocation to be maintained as separate records by a registered SDR because the execution of the bunched order and the allocations are separate reportable security-based swap transactions.

[581] *See* 75 FR 75214–15.

[582] *Id.* at 75215.

[583] *See id.* at 75237.

[584] *See* 78 FR 31069–72.

[585] *See id.* at 31071–72.

[586] Cravath Letter at 9.

[587] Japanese Banks Letter at 5.

[588] *See also* Multiple Associations IV at 6 (stating that ''many of the transaction-based requirements in Title VII, such as . . . trade reporting rules, generally do not further legislative or regulatory purposes when applied to inter-affiliate swaps,'' but without specifying whether the comment was with respect to regulatory reporting, public dissemination, or both).

[589] *See* 78 FR 31072.

The Commission continues to believe that the Commission and other relevant authorities should have ready access to information about the specific counterparties that hold positions in all security-based swaps subject to Regulation SBSR. While it is true that the Federal Reserve or perhaps another relevant authority might exercise consolidated supervision over a group, such supervision might not provide the Commission and other relevant authorities with current and specific information about security-based swap positions held by the group's subsidiaries. As a result, it would likely be more difficult for relevant authorities to conduct general market analysis or surveillance of market behavior, and could present difficulties during a crisis, when ready access to accurate and timely information about specific risk exposures might be crucial. Furthermore, the statutory provisions that require regulatory reporting of security-based swap transactions state that ''each'' security-based swap shall be reported; these statutory provisions do not by their terms limit the reporting requirement to transactions having particular characteristics (such as being negotiated at arm's length).[590] Even absent these constraints, for the reasons described above, the Commission does not believe that an exemption from regulatory reporting for these transactions would be appropriate. Therefore, Regulation SBSR subjects inter-affiliate security-based swaps to regulatory reporting.[591]

2. Public Dissemination of Inter-Affiliate Security-Based Swaps

As discussed below, some commenters raised concerns regarding the public dissemination of inter-affiliate security-based swaps. After carefully considering the issues raised by these commenters, the Commission has determined to adopt Regulation SBSR with no exemption from the public dissemination requirements for inter-affiliate security-based swaps.

As a preliminary matter, the Commission notes that, once a security-based swap transaction has been reported to a registered SDR, the counterparties assume no additional burdens associated with public dissemination of the transaction. That function will be carried out solely by the registered SDR. Thus, requiring registered SDRs to publicly disseminate security-based swaps, including inter-affiliate security-based swaps, will not increase the compliance burden on security-based swap counterparties.

One commenter argued that inter-affiliate security-based swaps should not be subject to public dissemination because ''public reporting could confuse market participants with irrelevant information'' and suggested that ''the Commissions collect data on these transactions but not require dissemination to the public at large.''[592] Another commenter stated that an inter-affiliate transaction ''does not contain any additional price information beyond that contained in the transaction with the customer.''[593] One group of commenters argued that publicly disseminating inter-affiliate transactions ''will distort the establishment of position limits, analysis of open interest, determinations of block trade thresholds and performance of other important regulatory analysis, functions and enforcement activities that require an accurate assessment of the [security-based] swaps market.''[594] These commenters stated, further, that inter-affiliate security-based swaps ''could be required to be publicly reported in multiple jurisdictions, even though they are not suitable for reporting in any jurisdiction.''[595]

An accurate assessment of the security-based swap market will be necessary for a wide range of functions, potentially including—as noted by this group of commenters—analysis of open interest and the establishment of block trade thresholds.[596] The Commission believes that users of security-based swap market data—whether regulators, SDRs, market participants, or the public at large—should have an accurate and undistorted view of the market. However, it does not follow that public dissemination of inter-affiliate security-based swaps will necessarily prevent an accurate assessment of the security-based swap market.

The need to distinguish reports of initial transactions from subsequent inter-affiliate transactions exists whether or not the latter are publicly disseminated. As noted above, the Commission is requiring each registered SDR to adopt, among others, policies and procedures for flagging transaction reports that have special circumstances.[597] This flagging mechanism is designed to provide regulators with a more accurate view of the security-based swap market, and the same mechanism can be applied to publicly disseminated last-sale reports to give market observers the same view. The Commission continues to believe that the commenters' concerns about the potentially limited price discovery value of inter-affiliate security-based swaps can be addressed through the public dissemination of relevant data that flags such limitations, rather than suppressing these transactions from public dissemination entirely. Additionally, even if the report of an initial security-based swap transaction has been publicly disseminated in another jurisdiction, the Commission believes that it would be preferable to disseminate a report of the subsequent inter-affiliate transaction with an appropriate condition flag rather than suppressing a report of the inter-affiliate

[590] Section 13A(a)(1) of the Exchange Act, 15 U.S.C. 78m–1(a)(1), provides that each security-based swap that is not accepted for clearing shall be subject to regulatory reporting. Section 13(m)(1)(G) of the Exchange Act, 15 U.S.C. 78m(m)(1)(G), provides that each security-based swap (whether cleared or uncleared) shall be reported to a registered SDR.

[591] In addition, one group of commenters acknowledged that ''a number of rules that apply to the core operations of a registered entity will perforce apply to such entity's inter-affiliate swap transactions and could further Dodd-Frank policy purposes.'' Multiple Associations Letter at 9. These commenters stated that inter-affiliate transactions would need to be taken into account in calculating an entity's capital requirements, and that internal recordkeeping requirements are essential to the oversight of the security-based swap business. *See id.* The Commission notes that regulatory reporting of all security-based swaps, including inter-affiliate security-based swaps, will assist the Commission and other relevant authorities in overseeing compliance with these capital and recordkeeping requirements, as the regulatory report of an entity's security-based swap activity could provide an external check of the internal records of such entities' positions and activities.

[592] Cleary II at 17. *See also* SIFMA/FIA/Roundtable Letter at A–44 (stating that ''real-time reporting of inter-affiliate [security-based swaps] . . . would distort market information and thus have a detrimental market and commercial impact'').

[593] ISDA/SIFMA I at 13. *See also* ISDA IV at 13 (recommending that inter-affiliate trades should not be subject to public dissemination).

[594] Multiple Associations Letter at 11–12. *See also* ISDA I at 5 (stating, in the context of pre-enactment security-based swaps, that inter-affiliate security-based swaps should not be subject to reporting).

[595] Multiple Associations Letter at 16.

[596] *See id.* at 11–12.

[597] These policies and procedures could address not only reporting of whether a security-based swap is an inter-affiliate transaction, but also whether the initial security-based swap was executed in a jurisdiction with public dissemination requirements. This could be either the United States or another jurisdiction that imposes last-sale transparency requirements similar to those in Regulation SBSR. Further, these policies and procedures also could address whether to indicate the approximate time when the initial security-based swap was executed. For example, there could be condition flags for the initial security-based swap having been executed within the past 24 hours, between one and seven days before, or longer than seven days before. An indication that the initial trade was executed less than 24 hours before could provide significant price discovery value, while an indication that the initial trade was executed over a week before could, all things being equal, have less. However, even information about a trade executed over a week ago (or more) could have price discovery value for security-based swaps that trade infrequently.

transaction from public dissemination through a registered SDR. Public dissemination of such a transaction by a registered SDR would help to assure that information concerning the transaction was readily available to participants in the U.S. market and other market observers.

One group of commenters argued that ''use of inter-affiliate [security-based swaps] not only allows risks to reside where they are more efficiently managed, but it also has a net positive effect on an institution's assets and liquidity, as well as on its efficiency in deploying capital. For these reasons, we believe that there should be an inter-affiliate exemption from the public dissemination requirements.'' [598] Another commenter raised similar concerns, arguing that ''public reporting of inter-affiliate transactions could seriously interfere with the internal risk management practices of a corporate group'' and that ''[p]ublic disclosure of a transaction between affiliates could prompt other market participants to act in a way that would prevent the corporate group from following through with its risk management strategy by, for instance, causing adverse price movements in the market that the risk-carrying affiliate would use to hedge.'' [599] The Commission agrees generally that corporate groups should engage in appropriate risk management practices. However, the Commission does not agree that Regulation SBSR, as adopted, is inimical to effective risk management. The Commission notes that, during the first phase of Regulation SBSR, all security-based swaps—regardless of size—must be reported within 24 hours from the time of execution and—except with regard to transactions falling within Rule 902(c)—immediately publicly disseminated. As discussed in Section VII, *supra,* this reporting timeframe is designed, in part, to minimize any potential for market disruption resulting from public dissemination of any security-based swap transaction during the interim phase of Regulation SBSR. The Commission anticipates that, during the interim period, it will collect and analyze data concerning the sizes of transactions that potentially affect liquidity in the market. If the Commission ultimately determines that some form of block trade exception to real-time public dissemination is appropriate, an inter-affiliate security-based swap of block size would be able to avail itself of that exception. The Commission sees no basis for concluding, at this time, that inter-affiliate security-based swaps are more difficult to hedge than other types of security-based swaps, or that the hedging of these transactions presents unique concerns that would not also arise in connection with the hedging of a security-based swap that was not an inter-affiliate transaction. Therefore, the Commission does not agree with the commenters' concern that public dissemination of inter-affiliate security-based swaps will impede the ability of corporate groups to hedge.

Another group of commenters argued that ''affiliates often enter into these swaps on terms linked to an external trade being hedged. If markets have moved before the inter-affiliate trade is entered into on the SEF or reported as an off-exchange trade, market participants could also misconstrue the market's true direction and depth.'' [600] This comment suggests that last-sale reports of transactions that appear out of the order in which the transactions in fact occurred could mislead market observers. The Commission shares this concern but does not conclude that the appropriate response is to suppress all inter-affiliate transactions from public dissemination. The Commission believes instead that this issue can be addressed by requiring the dissemination of the date and time of execution on the last-sale report.[601] This requirement is designed to allow market observers to construct a time-sequenced record of all transactions in the security-based swap market and thereby counteract the possibility that certain transactions could be reported and publicly disseminated out of the order in which they were in fact executed.

Some commenters stated that inter-affiliate security-based swaps ''are *typically* risk transfers with no market impact.'' [602] This statement does not exclude the possibility that some inter-affiliate security-based swaps might have a market impact. The Commission sees no basis to conclude at this time that inter-affiliate security-based swaps do not provide price discovery value or other useful information to market observers. Market observers might be able to discern useful information from the last-sale reports of some inter-affiliate security-based swaps, and the Commission believes that market observers should be given the opportunity to do so—particularly given the Title VII mandate that all security-based swaps shall be publicly disseminated. The value of this information to market observers is unknown at this time, because market observers have never before had the opportunity to view comprehensive last-sale information from the security-based swap market. Suppressing all inter-affiliate security-based swaps from public dissemination would eliminate any potential that market observers could develop ways to utilize this information. Thus, under the final rules, market observers who wish to evaluate the entire record of transactions, including inter-affiliate transactions, will have the opportunity to do so. As discussed above, the Commission disagrees with the commenters who argued that ''[r]equiring real-time reporting of inter-affiliate [security-based swaps] . . . would distort market information and thus have a detrimental market and commercial impact.'' [603] Because such transactions will be flagged, market observers can simply—if they wish—remove from their analysis any transactions having an inter-affiliate flag.

The Commission sees one circumstance where public dissemination of an inter-affiliate transaction could have significant price discovery value: When the initial transaction is effected in a foreign jurisdiction without a public dissemination requirement and is not otherwise subject to public dissemination under Regulation SBSR, and the subsequent inter-affiliate transaction—between one of the original counterparties and one of its affiliate—would be publicly disseminated if it fell within Rule 908(a)(1). Commenters' views that public dissemination of an inter-affiliate transaction would be duplicative and distorting are premised on the view that the initial transaction is, in fact, publicly disseminated, which may not always be the case.[604] Therefore, public dissemination of the subsequent inter-affiliate transaction might be the only way for the market to obtain any pricing information about the related pair of transactions.[605] In the Cross-Border Proposing Release, the Commission specifically noted this

[598] SIFMA/FIA/Roundtable Letter at A–44.

[599] Cleary II at 17.

[600] *See* Multiple Associations Letter at 12.

[601] *See* Rule 901(c)(2).

[602] SIFMA/FIA/Roundtable Letter at A–44; Multiple Associations Letter at 11 (emphasis added).

[603] SIFMA/FIA/Roundtable Letter at A–44.

[604] *See* Multiple Associations Letter at 12 (''The market-facing swaps already will have been reported and therefore, to require that inter-affiliate swaps also be reported will duplicate information'').

[605] In addition, even if the initial transaction is publicly disseminated, the Commission does not believe that publicly disseminating the second, inter-affiliate transaction would cause observers to obtain a distorted view of the market, as long as the second transaction is flagged as an inter-affiliate transaction. *See supra* Section VI(G).

circumstance and requested comment on it.[606] No commenters responded.

Finally, one commenter on the Cross-Border Proposing Release argued that the Commission should propose a comprehensive rule regarding inter-affiliate security-based swaps ''before finalizing the substantive underlying rules governing the SBS markets.'' [607] The commenter reasoned that ''a separate proposed rule, like the Cross-Border Proposal, is necessary to ensure that market participants are accorded sufficient opportunity to comment on the interplay between the Commission's proposed rules and inter-affiliate trades.'' [608]

The Commission notes that Regulation SBSR, as initially proposed, did not contemplate any exception for inter-affiliate security-based swaps, and the Regulation SBSR Proposing Release discussed at various points how proposed Regulation SBSR would apply to inter-affiliate transactions.[609] The Commission received comments regarding the reporting of inter-affiliate transactions in response to both the Regulation SBSR Proposing Release and the Cross-Border Proposing Release. Commenters on the Cross-Border Proposing Release's discussion of the application of Regulation SBSR to inter-affiliate security-based swaps did not raise any new issues that had not already been raised in response to the Regulation SBSR Proposing Release. In addition, as noted above, the Commission discussed in the Cross-Border Proposing Release the comments regarding inter-affiliate transactions submitted in response to the Regulation SBSR Proposing Release.[610] After carefully considering all of these comments, the Commission believes that commenters had sufficient opportunity to present their views on inter-affiliate transactions in Regulation SBSR and therefore it is appropriate at this time to adopt final rules relating to regulatory reporting and public dissemination of security-based swaps, including inter-affiliate security-based swaps.

X. Rule 903—Use of Codes

Regulation SBSR, as adopted, permits or, in some instances, requires security-based swap counterparties to report coded information to registered SDRs. These codes, known as unique identification codes (''UICs''), will be used to identify products, transactions, and legal entities, as well as certain business units and employees of legal entities.[611] Rule 903 of Regulation SBSR establishes standards for assigning and using coded information in security-based swap reporting and dissemination to help ensure that codes are assigned in an orderly manner and that regulators, market participants, and the public are able to interpret coded information stored and disseminated by registered SDRs.

A. Proposed Treatment of Coded Information

As initially proposed, Regulation SBSR would have established a process for assigning UICs in Rule 900 and addressed the standards for using coded information in Rule 903. Proposed Rule 900 would have provided that a ''unique identification code'' or ''UIC'' would be the unique code assigned to a person, unit of a person, or product by or on behalf of an internationally recognized standards-setting body (''IRSB'') that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory. The proposed definition of ''UIC'' further would have provided that, if there existed no IRSB meeting these criteria, a registered SDR would have been required to assign all necessary UICs using its own methodology. Similarly, if an IRSB meeting the criteria existed but had not assigned a relevant UIC, the registered SDR would have been required to assign that UIC using its own methodology. When the Commission re-proposed Regulation SBSR as part of the Cross-Border Proposing Release, it designated the definition of ''UIC'' as re-proposed Rule 900(nn) but made no changes to the substance of the definition.[612]

Rule 903, as originally proposed, would have permitted the use of codes in place of certain data elements for purposes of reporting and publicly disseminating the information required under proposed Rules 901 and 902 of Regulation SBSR, provided that the information to interpret such codes is ''widely available on a non-fee basis.'' When the Commission re-proposed Rule 903, it replaced the term ''reporting party'' with ''reporting side'' but otherwise made no substantive revisions to the rule.[613]

B. Comments Received and Final Rule 903

1. Relocation of UIC Provisions Into Rule 903

Final Rule 903 is divided into paragraphs (a) and (b). Rule 903(a) sets out the requirements that registered SDRs must follow when assigning UICs. Similar requirements were initially proposed as part of the definition of ''UIC'' in Rule 900, and re-proposed without revision in Rule 900(nn). The Commission now believes that it would be more consistent with the overall structure of Regulation SBSR to move any substantive requirements from the definitions rule (Rule 900) and into an operative rule. Therefore, the Commission's substantive requirements for a registered SDR's use of UICs are now located in final Rule 903.[614] As described below, the Commission is adopting these requirements substantially as proposed, but with certain changes as described below. In particular, Rule 903(a), as adopted, includes new language regarding Commission recognition of international systems for assigning UICs. In addition, final Rule 903(a) provides that, if the Commission has recognized such a system that assigns UICs to persons, each participant of a registered SDR shall obtain a UIC from or through that system for identifying itself, and each participant that acts as a guarantor of a direct counterparty's performance of any obligation under a security-based swap that is subject to Rule 908(a) shall, if the direct counterparty has not already done so, obtain a UIC for identifying the direct counterparty from or through that system, if that system permits third-party registration without a requirement to obtain prior permission of the direct counterparty.

Final Rule 903(b) imposes certain restrictions on how coded information may be reported and publicly disseminated. Rule 903(b) substantially incorporates the earlier versions of Rule 903, with certain conforming and technical changes described below.

2. Comments Regarding UICs and Final Rule 903(a)

The Commission received several comments on the proposed rules relating to UICs and the development of internationally recognized LEIs generally. One commenter expressed concern that, absent a methodology

[606] *See* 78 FR 31072.

[607] SIFMA/FIA/Roundtable Letter at A–28.

[608] *Id.* at A–30.

[609] *See* 75 FR 75215, 75234, 75237.

[610] *See* 78 FR 31069–72.

[611] *See supra* Section II (describing UICs that must be reported to registered SDRs pursuant to Regulation SBSR).

[612] *See* 78 FR 31211–12.

[613] *See id.* at 31213.

[614] Accordingly, the Commission is now adopting a simplified definition of ''UIC.'' *See* Rule 900(qq) (defining ''UIC'' as ''a unique identification code assigned to a person, unit of a person, product, or transaction''). *See also infra* Section X(B)(2) (discussing final Rule 903(a)).

outlined by a standard-setting body, multiple UICs could be assigned by different regulators to the same financial entity, thereby creating compliance burdens, operational difficulties, and opportunities for confusion.[615] Another commenter believed that, absent internationally recognized LEIs, requiring SDR-specific UICs would create inconsistencies among different SDRs.[616] This commenter recommended that the Commission postpone this requirement until an international taxonomy exists that can be applied consistently.[617] A third commenter stated that it is imperative that a single source of reference data and unambiguous identifiers be established.[618] A fourth commenter argued that ''[s]ignificant progress in establishing the GLEIS has been made to date, and the time for further expanding the use of the LEI through rulemaking is favorable.'' [619] A fifth commenter noted that the CFTC's swap reporting rules require the use of LEIs and urged the Commission, for the sake of clarity and consistency, to replace its reference to ''unique counterparty identifiers'' with ''Legal Entity Identifiers,'' unless the Commission's rule was intended to include identifiers beyond LEIs.[620] A sixth commenter suggested that the rules reflect primary use of the LEI as a party identifier and the need to use an LEI ''when available,'' recognizing that a reporting party may request but cannot compel its counterparties to obtain an LEI.[621]

The Commission is adopting in Rule 903(a) the provisions relating to the process for assigning UICs largely as proposed and re-proposed, but—reflecting the comments described above—is including two new requirements: (1) That the Commission recognize an IRSS before the use of UICs from that IRSS becomes mandatory under Regulation SBSR; and (2) that, if the Commission has recognized an IRSS that assigns UICs to persons, each participant of a registered SDR shall obtain a UIC from or through that IRSS. As noted below, the Commission is recognizing the GLEIS as an IRSS for assigning LEIs. Final Rule 903(a) states: ''If an internationally recognized standards-setting system that imposes fees and usage restrictions on persons that obtain UICs for their own usage that are fair and reasonable and not unreasonably discriminatory and that meets the requirements of paragraph (b) of this section is recognized by the Commission and has assigned a UIC to a person, unit of a person, or product (or has endorsed a methodology for assigning transaction IDs), the registered security-based swap data repository shall employ that UIC (or methodology for assigning transaction IDs). If no such system has been recognized by the Commission, or a recognized system has not assigned a UIC to a particular person, unit of a person, or product (or has not endorsed a methodology for assigning transaction IDs), the registered security-based swap data repository shall assign a UIC to that person, unit of person, or product using its own methodology (or endorse a methodology for assigning transaction IDs). If the Commission has recognized such a system that assigns UICs to persons, each participant of a registered security-based swap data repository shall obtain a UIC from or through that system for identifying itself, and each participant that acts as a guarantor of a direct counterparty's performance of any obligation under a security-based swap that is subject to § 242.908(a) shall, if the direct counterparty has not already done so, obtain a UIC for identifying the direct counterparty from or through that system, if that system permits third-party registration without a requirement to obtain prior permission of the direct counterparty.'' [622]

The Commission shares commenters' desire to have identifiers that are widely recognized, which would increase efficiency at both the SDR and market participant level. To avoid confusion about when an IRSS meets the standards of Rule 903, the Commission has modified the rule to provide that UICs issued by a particular IRSS would not become mandatory under Regulation SBSR unless the Commission has recognized the IRSS. As detailed below, the Commission is recognizing the GLEIS, applying the standards provided in Rule 903. The Commission will apply the standards provided in Rule 903 to any future assessment of whether an IRSS should be recognized as a provider of UICs for purposes of Regulation SBSR. Specifically, the Commission will consider whether the IRSS imposes fees and usage restrictions on persons that obtain UICs for their own usage that are fair and reasonable and not unreasonably discriminatory, and whether the information necessary to interpret the codes assigned by or through the IRSS is widely available to users of the information on a non-fee basis and without usage restrictions.[623]

Since Regulation SBSR was initially proposed in 2010, significant strides have been made in the development of a globally recognized LEI. The Commission hereby recognizes the GLEIS, which operates under a regulatory oversight committee (''ROC''), as an internationally recognized standards-setting system (''IRSS'') [624] that meets the requirements of Rule 903 of Regulation SBSR. The Commission notes that the LEI Regulatory Oversight Committee (''LEI ROC'') currently includes members that are official bodies from over 40 jurisdictions.[625] LEIs are being issued by over 30 pre-local operating units (''pre-LOUs'') around the globe, including the Global Markets Entity Identifier (''GMEI'') Utility in the United States.[626] Furthermore, the Commission believes that the GLEIS imposes fees and usage restrictions on persons that obtain UICs

[615] *See* ICI I at 6.

[616] *See* DTCC V at 14 (also noting that, while global standards for identification codes are likely to exist for some data fields, certain global identifiers will not exist).

[617] *See id. See also* Bloomberg Letter at 1 (''an identifier system should be comprehensive and global'').

[618] *See* Benchmark Letter at 1.

[619] *See* letter from Kenneth E. Bentsen, Jr., President and CEO, SIFMA, to the Honorable Jacob J. Lew, Chairman, Financial Stability Oversight Council, dated April 11, 2014, available at *http://www.sifma.org/newsroom/2014/sifma_pushes_for_broad_use_of_leis_to_promote_financial_stability/* (last visited January 13, 2015). In a prior comment letter, this commenter recommended that ''industry utilities'' be considered for assigning unique IDs for legal entities/market participants, as well as for transactions and products. *See* ISDA/SIFMA I at 8. *See also* SWIFT Letter at 2 (expressing support for a global standard for identifying security-based swap market participants); DTCC X (stating that there has been significant adoption globally on transaction ID, product ID, and LEI standards).

[620] *See* Levin Letter at 4.

[621] *See* ISDA IV at 12. Regulation SBSR, as adopted, does not compel a counterparty on a reporting side to a security-based swap to obtain an LEI for a counterparty on the other side of the transaction.

[622] *See infra* Section X(B)(3) (explaining the Commission's rationale for adopting final Rule 903(a)).

[623] *See infra* Section X(B)(3) (discussing final Rule 903(b)).

[624] Regulation SBSR, as proposed and re-proposed, would have employed the term ''internationally recognized standards-setting *body*'' rather than ''internationally recognized standards-setting *system*,'' which is used in Regulation SBSR, as adopted. The Commission made this revision to better reflect the process of LEI issuance. LEIs are being assigned by a number of different bodies in different jurisdictions being coordinated through a global system, rather than by a single body.

[625] The Commission is a member of the Executive Committee of the LEI ROC. The LEI ROC is a stand-alone committee established pursuant to recommendations by the Financial Stability Board (''FSB'') that was subsequently endorsed by the Group of 20 nations. *See* Financial Stability Board (''FSB''), *A Global Legal Entity Identifier for Financial Markets* (June 8, 2012), available at *http://www.leiroc.org/publications/gls/roc_20120608.pdf* (last visited September 22, 2014); *http://www.treasury.gov/resource-center/international/g7-g20/Documents/G20%20Ministerial%20Communique%20November%204-5-2012-Mexico%20City.pdf* (last visited September 22, 2014).

[626] *See https://www.gmeiutility.org/index.jsp*.

for their own usage that are fair and reasonable and not unreasonably discriminatory under Rule 903(a).[627] The Commission also understands that the GLEIS does not impose any fees for usage of or access to its LEIs, and that all of the associated reference data needed to understand, process, and utilize the LEIs are widely and freely available and not subject to any usage restrictions.[628] Therefore, the Commission believes that the LEIs issued by or through the GLEIS meet the standards of Rule 903(b), which are discussed in the section immediately below. The Commission also notes that it would expect to revisit its recognition of the GLEIS if the GLEIS were to modify its operations in a manner that causes it no longer to meet the standards of Rule 903. The Commission believes that the provisions of Rule 903—coupled with the Commission's recognition of the GLEIS—will facilitate the reporting and analysis of security-based swap transaction data, because (1) each participant of a registered SDR must be identified using the same LEI for all transactions reported pursuant to Regulation SBSR, and regardless of which registered SDR holds records of its transactions, and (2) a participant, when it acts as guarantor of a direct counterparty to a security-based swap that is subject to Rule 908(b), is required to obtain an LEI from or through the GLEIS if the direct counterparty does not already have an LEI and if the system permits third-party registration without a requirement to obtain prior permission of the direct counterparty.[629]

As noted above, one commenter recommended that, for clarity and consistency with the CFTC's swap reporting rules, the Commission refer to LEIs, rather than UICs, unless the Commission intended to include identifiers beyond LEIs.[630] Although the Commission agrees that the use of the term ''LEI'' would provide greater consistency with the CFTC's rules, Regulation SBSR continues to refer to UICs, rather than LEIs, for two reasons. First, as the commenter suggested, the term ''UIC'' in Regulation SBSR includes identifiers in addition to LEIs, such as identifiers for products, transactions, business units of legal entities (*i.e.,* branches and trading desks), and individual traders.[631] Second, the GLEIS does not extend to natural persons or sub-legal entity business units, such as a branches and trading desks. Because at present the Commission has not recognized an IRSS for these types of UICs, a registered SDR is required to assign UICs to these entities using its own methodology. Thus, because Regulation SBSR refers to identifiers in addition to LEIs, Regulation SBSR continues to refer to UICs rather than LEIs.

The Commission acknowledges that, under final Rule 903(a), different registered SDRs could, in theory, assign different UICs to the same person, unit of a person, or product. Inconsistent UICs could require the Commission and other relevant authorities to map the UICs assigned by one registered SDR to the corresponding UICs assigned by other registered SDRs to obtain a complete picture of the market activity pertaining to a particular person or business unit.[632] Although mapping may present certain challenges, the Commission believes that this approach is better than the likely alternative of having market participants assign UICs to identify persons, units of persons, or products according to their own methodologies.[633] In other words, the Commission believes that UICs, even if they are SDR-specific, will provide a streamlined way of reporting, disseminating, and interpreting security-based swap information.[634] The Commission believes that requiring registered SDRs to develop their own UICs—but only for UICs that are not assigned by or through an IRSS that has been recognized by the Commission—will result in less confusion than the currently available alternatives, such as allowing each reporting side to utilize its own nomenclature conventions, which would subsequently have to be normalized by registered SDRs themselves or by the Commission.

The Commission further understands that, at this time, neither the GLEIS nor any other IRSS has assigned product IDs or established a methodology for assigning transaction IDs. Therefore, a registered SDR also is required under Rule 903(a) to assign, or endorse a methodology for assigning, product IDs and transaction IDs. One commenter recommended that ''industry utilities'' be considered for assigning unique IDs, including transaction IDs and product IDs.[635] With respect to product IDs, Rule 903(a) provides a registered SDR with flexibility to assign a product ID created by an industry utility, in the absence of an IRSS recognized by the Commission that issues product IDs. Thus, if an industry utility developed product IDs,[636] a registered SDR could endorse that industry utility as the means for assigning such product IDs, and require use of those product IDs for reporting and publicly dissemination transaction information in its policies and procedures required by Rule 907(a).

With respect to transaction IDs, a registered SDR—in the absence of an IRSS recognized by the Commission that has endorsed a methodology for assigning transaction IDs—is required to

[627] *See* FSB, *A Global Legal Entity Identifier for Financial Markets,* at 20 (''Fees, where and when imposed, should be modest and set on a non-profit cost-recovery basis'') and at 20, note 20 (''It is possible that some jurisdictions could be willing to fund the LEI issuance from public sources and provide LEIs to its local entities free of charge''). As of December 26, 2014, the cost of obtaining an LEI from the GMEI Utility was $200, plus a $20 surcharge for the LEI Central Operating Unit. The annual cost of maintaining an LEI from the GMEI Utility was $100, plus a $20 surcharge for the LEI Central Operating Unit. *See https://www.gmeiutility.org/frequentlyAskedQuestions.jsp*.

[628] *See, e.g., http://www.financialstabilityboard.org/wp-content/uploads/r_120608.pdf?page_moved=1*, at 9 (''Access to the LEI and associated reference data will be free and open to all users, and there should be no 'bundling' of other services alongside the LEI by providers which forces users to pay directly or indirectly for the LEI''). In addition, LEI information can be downloaded at no cost from pre-LOU Web sites. *See, e.g., https://www.gmeiutility.org/* (providing a link for downloading an FTP file containing LEI information).

[629] The Commission understands that the GLEIS permits one firm to register a second firm when the first firm has a controlling interest over the second. *See https://www.gmeiutility.org/frequentlyAskedQuestions.jsp* (''Who can register an entity for the LEI?'').

[630] *See* Levin Letter at 4.

[631] Rule 900(qq), as adopted, defines UIC to mean ''a unique identification code assigned to a person, unit of a person, product, or transaction.''

[632] To avoid this possibility with respect to the identification of legal persons that are participants of at least one registered SDR, the Commission has recognized the GLEIS—by or through which LEIs are issued—as an IRSS that meets the criteria of Rule 903. The Commission is requiring that, if the Commission has recognized such a system that assigns UICs to persons, each participant of a registered SDR shall obtain a UIC from or through that system. The Commission notes that a single person may act in various capacities in the security-based swap market. For example, a person could be a direct counterparty with respect to some transactions while acting as a broker with respect to other transactions. If that person is a participant of a registered SDR, that person must obtain an LEI from or through the GLEIS to identify itself in all applicable security-based swap transaction reports, regardless of the capacity in which the person acted with respect to a particular transaction.

[633] The Commission notes, however, that Regulation SBSR does not prohibit one registered SDR from utilizing the UICs that were originally assigned by another SDR.

[634] *See infra* Section XIX (discussing regulatory implications of having multiple registered SDRs).

[635] *See* ISDA/SIFMA I at 8. *See also* ISDA IV at 12 (requesting that the Commission acknowledge the ISDA OTC Taxonomy as an acceptable product ID for reporting under Regulation SBSR and recognize that reporting parties, as opposed to SDRs, are generally best positioned to assign these values). In the context of the development of product IDs, the Commission is not at this time making any determination as to whether the ISDA OTC Taxonomy system constitutes an IRSS under Regulation SBSR, or whether the product IDs issued under the ISDA OTC Taxonomy system meet the criteria of Rule 903.

[636] *See id.*

assign transaction IDs or endorse a methodology for assigning transaction IDs.[637] A number of commenters recommended that Regulation SBSR permit transaction IDs generated by persons other than a registered SDR.[638] The Commission generally agrees with these comments, and has revised the UIC provisions relating to transaction IDs as follows. Although Rule 900, as proposed and re-proposed, would have defined ''transaction ID'' as ''the unique identification code assigned by registered security-based swap data repository to a specific security-based swap,'' the definition of ''UIC'' in proposed Rule 900(nn) did not mention transaction IDs. The final definition of ''UIC'' includes transaction IDs in addition to identification codes for persons, units of persons, and products. The final definition of ''transaction ID'' is ''the UIC assigned to a specific security-based swap transaction,'' without the limitation that it be assigned by a registered SDR. The Commission agrees with these commenters that requiring a registered SDR to use transaction IDs assigned only by a registered SDR would not be practical. The Commission believes that it would be more efficient and consistent with current practice in the security-based swap market to allow transaction IDs to be assigned at or shortly after execution, by a counterparty, platform, or post-trade processor. Final Rule 903(a) includes language that contemplates that an IRSS or registered SDR may ''endorse a methodology for assigning transaction IDs.'' This formulation makes clear that transaction IDs need not be assigned by an IRSS or registered SDR itself, but can be assigned by security-based swap counterparties, platforms, or post-trade processors using the IRSS's or registered SDR's methodology. Any entity that assigns the transaction ID must do so in accordance with the methodology endorsed by a recognized IRSS or, in the absence of a recognized IRSS that has endorsed a methodology for assigning transaction IDs, by the registered SDR that will receive the report of the transaction.[639]

Two commenters addressed the types of entities that can act as IRSSs. One of these commenters recommended that for-profit entities be permitted to act as reference data registration authorities,[640] while the other commenter argued that LEIs should be issued by a not-for-profit entity that operates on the principle of cost recovery, and that the industry should determine the appropriate model for cost recovery.[641] The Commission does not believe that it is necessary or appropriate to specify the type of entity—for-profit or non-profit—that can establish or operate an IRSS. Whichever the case, final Rule 903(a) specifies that the UICs issued by an IRSS may be used under Regulation SBSR only if the IRSS that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory and that meets the criteria of Rule 903(b) has been recognized by the Commission. In other words, the overall character of the IRSS's operation does not matter for purposes of compliance with Regulation SBSR (*i.e.,* whether it is a for-profit or non-profit entity) so long as any fees and usage restrictions imposed with respect to UICs meets the requirements of Rule 903(a). In addition, any codes used as, or as part of, UICs under Regulation SBSR must meet the standards of Rule 903(b), which are described below.

3. Comments on Proposed Rule 903 and Final Rule 903(b)

Commenters expressed differing views regarding whether the providers of UICs—and product IDs in particular—should be able to charge fees for the codes or for the information necessary to interpret the codes. One commenter supported the proposed requirement that information necessary to interpret reported or publicly disseminated codes be available free of charge.[642] However, a second commenter—a provider of product identification codes for security-based swaps—stated that Regulation SBSR should not require product identifiers to be freely available.[643] This commenter noted that maintaining a reliable identification system for security-based swaps requires a substantial level of investment, and recommended that the providers of product identification codes be permitted to charge commercially reasonable fees for developing and maintaining the codes.[644] A third commenter recommended that existing licensing codes be used for product IDs to the extent possible, because using existing codes would be easier for registered SDRs; the use of new codes would require ongoing maintenance and the development of specific processes for reporting, which could result in poorer quality data submissions.[645]

After careful consideration of these comments, the Commission continues to believe that the information necessary to interpret any codes used by registered SDRs must be ''widely available on a non-fee basis.'' Thus, the Commission is adopting this key feature of Rule 903(b) as proposed and re-proposed. A primary goal of Title VII is to use reporting and public dissemination of security-based swap data as a means of monitoring risks and increasing transparency, both to regulators and the public, of the security-based swap markets. If the transaction data that are reported and publicly disseminated contain codes and the information necessary to interpret such codes is not widely available on a non-fee basis, these Title VII goals could be frustrated. In the absence of Rule 903(b), a registered SDR could require—or acquiesce in the use of—proprietary, fee-based identification codes, thereby requiring all users of the security-based swap market data to pay the code creator, directly or indirectly, for the information necessary to interpret the codes. Users of the data also might be subject to usage restrictions imposed by the code creator.

Currently, the security-based swap market data typically include fee-based codes, and all market participants and market observers must pay license fees and agree to various usage restrictions to

[637] *See* Rule 903(a). *See also supra* Section III(B)(2) (discussing transaction IDs).

[638] *See* DTCC V at 14 (recommending that the Commission allow flexibility for a registered SDR to accept transaction IDs already generated by the reporting side or to assign transaction IDs where such request is made); ISDA III at 2; ISDA IV at 11; Tradeweb Letter at 5 (arguing that SB SEFs and exchanges should be permitted to assign transaction IDs).

[639] *See* Rule 903(a). Thus, for example, a counterparty or platform must not generate 40-character transaction IDs if the registered SDR requires and can accept only 32-character transaction IDs.

[640] *See* GS1 Proposal at 53.

[641] *See* ISDA/SIFMA I at 8.

[642] *See* Barnard I at 3 (noting that making this information available for free could eliminate confusion).

[643] *See* Markit I at 6 (stating that identifier systems provided on an automated basis and/or for free ''generally are not adequate for the intended goals'').

[644] *See id.*

[645] *See* DTCC II at 16. The commenter supported the continued use of existing license codes, including the Markit Reference Entity Database (''RED'')™ codes currently used in trade confirmations for credit derivatives and the Reuters Instrument Codes (''RIC'') used in electronic messages for equity derivatives. The commenter further noted that without RED codes, the description of a reference entity in submitted data could vary, even in minor ways (*e.g.,* the punctuation used in an abbreviation), creating difficulties for the SDR that would be required to correctly identify the reference entity. This commenter also suggested that the Commission adopt a rule that would provide existing licensing codes at a reduced cost for small volume market participants. As described below, final Rule 903(b) permits the use of codes in security-based swap reports under Regulation SBSR only if the information necessary to interpret the codes is widely available on a non-fee basis.

obtain the information necessary to interpret the codes. The Commission believes that allowing continuation of the status quo would not satisfy the Title VII mandate to increase security-based swap market transparency through public dissemination. If information to understand embedded codes is not widely available on a non-fee basis, information asymmetries would likely continue to exist between large market participants who pay for the codes and others market participants. One commenter suggested that alternatives could be developed to the status quo of using fee-based codes in security-based swap market data.[646] The Commission welcomes the development of such alternatives, and believes that Rule 903(b), as adopted, will likely encourage such development.

Furthermore, the Commission believes that the public dissemination requirements in Title VII should allow observers of the market to incorporate the information contained in public reports of security-based swaps into any decisions they might take regarding whether and how to participate in the market (or even to avoid participation), and for intermediaries in the market to incorporate this information to provide better advice to their clients about the market. The Commission does not believe that these objectives would be advanced if the ability of market participants to understand public reports of security-based swap transactions were conditioned on agreeing to pay fees to a code creator. The Commission similarly believes that subjecting the public's use of this information to restrictions imposed by a code creator also could frustrate the objectives of public dissemination. In addition, allowing continuation of the status quo would retard the ability of the Commission and other relevant authorities to obtain and analyze comprehensive security-based swap information.

The Commission recognizes the usefulness of codes. They make reporting more efficient because providing just one code—a product ID, for example—can eliminate the need to report multiple data elements individually. Codes also facilitate the standardized representation of security-based swap data and thereby make reporting (and understanding reported data) more reliable and efficient.[647] With respect to product IDs specifically, the Commission believes that unless an IRSS has been recognized by the Commission and can assign product IDs, registered SDRs should be free to choose between using an existing mechanism for assigning product IDs—assuming it is consistent with Rule 903(b)—and developing a new product classification system. If all existing product identification codes require users of the transaction information to pay a fee, then a registered SDR may not require or permit use of those codes for reporting and public dissemination. The registered SDR would be required to issue UICs using its own methodology and make the information necessary to interpret those codes available on a non-fee basis.

In light of the requirement in Rule 903(b) that the information necessary to interpret coded information be widely available on a non-fee basis, it would be inconsistent with the rule for a registered SDR to permit information to be reported pursuant to Rule 901, or to publicly disseminate information pursuant to Rule 902, using codes in place of certain data elements if the registered SDR imposes, or permits the imposition of, any usage restrictions on the disseminated information. The purpose of Rule 903(b) is to help ensure that the public is able to utilize the last-sale information provided by Regulation SBSR without limitation or expense.

The commenter that provides product identification codes for security-based swaps also noted that proposed Regulation SBSR would allow an IRSB that develops counterparty identifiers to charge fees, and believed that providers of product IDs should receive comparable treatment.[648] In response to this comment, the Commission believes that it is appropriate to make minor revisions to the rule language to clarify its original intent and thereby eliminate any apparent contradiction between the two paragraphs of Rule 903. When the Commission originally proposed that an IRSB could impose fees and usage restrictions as long as they were fair and reasonable and not unreasonably discriminatory, the Commission intended that language to apply to persons that obtain UICs for their own usage (such as a legal entity that seeks to identify itself as a counterparty when engaging in security-based swap transactions), not ultimate users of the information (such as third parties who might wish to enter into a security-based swap with that entity as the reference entity). The Commission believes that this distinction is consistent with international efforts to develop a global LEI.[649]

In Rule 903(a), as adopted, the Commission is inserting after the words ''fees and usage standards'' the new words ''on persons that obtain UICs for their own usage.'' [650] This language clarifies that it is consistent with Rule 903(a) for a registered SDR to accept codes for which the code creator assesses fair and reasonable fees on market participants that need to identify themselves, their agents, or parts of their organizations when engaging in financial activities. For example, Rule 903(a) would permit a registered SDR to charge participants that need to acquire UICs that are assigned by registered SDRs, such as counterparty IDs, ultimate parent IDs, branch IDs, trading desk IDs, and trader IDs.

In Rule 903(b), as adopted, the Commission is inserting the words ''to users of the information'' immediately

[646] *See* Bloomberg Letter at 2. This commenter stated that it would be possible to develop a public domain symbology for security-based swap reference entities that relied on products in the public domain to ''provide an unchanging, unique, global and inexpensive identifier.'' According to this commenter, its proprietary symbology product for securities could provide a starting point for a security-based swap symbology product.

[647] For example, in the absence of an LEI, different persons might refer to a particular legal entity as ''XYZ,'' ''XYZ Corp.'', or ''XYZ Corporation.'' Confusion about whether all of these terms refer to same entity would be minimized, if not wholly eliminated, if all parties referred to the entity using the same code (*e.g.,* ''ABCD12345'').

[648] *See* Markit Letter at 6.

[649] *See* Charter of the Regulator Oversight Committee for the Global Legal Entity Identifier (LEI) System (November 5, 2012), *http://www.leiroc.org/publications/gls/roc_20121105.pdf* (last visited September 22, 2014) (''ROC Charter''). The ROC Charter provides that the mission of the ROC is ''to uphold the governance principles of and to oversee the Global LEI System, in the broad public interest.'' *Id.* at 1. The ROC Charter further provides that, in protecting the broad public interest, the objectives of the ROC include ''open and free access to publicly available data from the Global LEI System,'' and specifically includes the following principle: ''all public data should be readily available on a continuous basis, easily and widely accessible using modern technology, and *free of charge.'' Id.* at 2 (emphasis added). At the same time, the ROC Charter states that ''any entities required, or eligible, to obtain an LEI [must be] able to acquire one under open and non-discriminatory terms.'' *Id.* One such term is that ''fees, where and when imposed by the [Central Operating Unit], are set on a non-profit cost-recovery basis.'' *Id.*

[650] Final Rule 903(a) thus provides: ''If an internationally recognized standards-setting system that imposes fees and usage restrictions *on persons that obtain UICs for their own usage* that are fair and reasonable and not unreasonably discriminatory is recognized by the Commission and has assigned a UIC to a person, unit of a person, or product (or has endorsed a methodology for assigning transaction IDs), the registered security-based swap data repository shall employ that UIC (or methodology for assigning transaction IDs). If no such system has been recognized by the Commission, or a recognized system has not assigned a UIC to a particular person, unit of a person, or product (or has not endorsed a methodology for assigning transaction IDs), the registered security-based swap data repository shall assign a UIC to that person, unit of person, or product using its own methodology (or endorse a methodology for assigning transaction IDs)'' (emphasis added).

after the phrase ''widely available.''[651] The users of information referred to in final Rule 903(b) could include the Commission, other relevant authorities, or any person who wishes to view or utilize the publicly disseminated security-based swap transaction data for any purpose. As noted above, the Commission does not believe that access to this information should be impeded by having to pay fees or agree to usage restrictions in order to understand any coded information that might be contained in the transaction data.

The Commission notes that Rule 903(b) prevents registered SDRs and code creators from impeding a person's ability to obtain the information necessary to interpret coded information used in reporting or public dissemination under Regulation SBSR. Rule 903(b) is not intended to prevent a registered SDR from charging for its SDR services. To the contrary, registered SDRs are expressly permitted to charge fees for their SDR services that are fair and reasonable and not unreasonably discriminatory.[652]

The Commission notes that it is making an additional revision to the language in re-proposed in Rule 903 to conform final Rule 903(b) to the Commission's original intent and to avoid any potential conflict with final Rule 901(h). Rule 901(h), as adopted, provides that the reporting side shall electronically transmit the information required under Rule 901 to a registered SDR ''in a format required by the registered [SDR].'' Under re-proposed Rule 903, the reporting side could ''provide information to a registered [SDR] . . . using codes in place of certain data elements.''[653] This language in re-proposed 903 could have been read to give the reporting side discretion to select what codes it could use for reporting transaction information to a registered SDR., The Commission has revised final Rule 903(b) to more clearly reflect its original intent: That reporting sides shall report information in a format required by the registered SDR.[654] Thus, Rule 903(b), as adopted, provides that a registered SDR ''may permit information to be reported . . . using codes in place of certain data elements.'' The Commission believes that final Rule 903(b), read together with final Rule 901(h), makes clear that a reporting side may provide coded information to a registered SDR only to the extent permitted by the registered SDR and only in a format required by the SDR. Therefore, the reporting side may not exercise its own discretion when selecting codes to use in its reports to the registered SDR, regardless of whether the codes otherwise comport with Rule 903.

Finally, one commenter expressed concern that, although Regulation SBSR, as initially proposed, would have required that the information necessary to interpret codes be made available for free, the proposal would not have prevented a code creator from charging for other uses.[655] In this commenter's view, ''[a] widely used identifier can become a *de facto* standard for anyone doing business in the relevant marketplace. This creates the potential for abuse, defeating the entire purpose of promoting the broad availability of identifiers.''[656] This commenter believed instead that, ''[a]s long as all market participants have the unfettered freedom to introduce alternative identifiers and to map those identifiers to the standard, however, multiple, competing identifiers can provide an inexpensive solution.''[657] The Commission shares the commenter's concern that identification codes not become a tool for monopolistic abuse. This is why the Commission is requiring in Rule 903(b) that, if such codes will be used for reporting or publicly disseminating security-based swap transaction data, ''the information necessary to interpret such codes [must be] widely available to users of the information on a non-fee basis.'' Thus, the Commission does not believe it will be necessary for market participants to introduce alternative identifiers, although Regulation SBSR would not prohibit them from doing so.

C. Policies and Procedures of Registered SDRs Relating to UICs

As proposed and re-proposed, Rule 907(a)(5) would have required a registered SDR to establish and maintain written policies and procedures for assigning: (1) A transaction ID to each security-based swap that is reported to it; and (2) UICs established by or on behalf of an IRSB that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory (or, if no standards-setting body meets these criteria or a standards-setting body meets these criteria but has not assigned a UIC to a particular person, unit of a person, or product, assigning a UIC using its own methodology).

The Commission received several comments, noted above, that discussed utilization of UICs generally and considered them in connection with Rule 907(a)(5).[658] The Commission also received a comment that generally encouraged the Commission to adopt a convention for assigning unique IDs and incorporating a pilot or early adopter program for certain products and participants that would allow for end-to-end testing and proof of concept.[659]

As discussed above, the Commission believes that UICs—even if utilized on an SDR-specific basis in the absence of UICs issued by a recognized IRSS—will create a more consistent and transparent system for reporting and analyzing security-based swap transactions. Therefore, the Commission continues to believe that it is important for registered SDRs to have policies and procedures providing for the issuance of such UICs and is adopting a modified version of Rule 907(a)(5) that requires registered SDRs to establish written policies and procedures ''[f]or assigning UICs in a manner consistent with [Rule 903].'' This is a conforming change to be consistent with the Commission's decision to locate the substantive requirements for the assignment of UICs in Rule 903.[660] With respect to the comment received, the Commission believes that market participants can work with entities that are likely to register with the Commission as SDRs on pilot programs for certain products and conventions for assigning UICs. However, the Commission does not believe it would be appropriate for the Commission itself to adopt such

[651] Final Rule 903(b) thus provides: ''A registered security-based swap data repository may permit information to be reported pursuant to § 242.901, and may publicly disseminate that information pursuant to § 242.902, using codes in place of certain data elements, provided that the information necessary to interpret such codes is widely available *to users of the information* on a non-fee basis'' (emphasis added).

[652] *See* Rule 13n–4(c)(1)(i) under the Exchange Act, which is part of the SDR Adopting Release. *But see* Regulation SBSR Proposed Amendments Release, Section VI (proposing to prohibit SDRs from charging fees for publicly disseminating regulatorily mandated transaction data).

[653] Specifically, re-proposed Rule 903 provided that ''The reporting side may provide information to a registered security-based swap data repository pursuant to § 242.901 and a registered security-based swap data repository may publicly disseminate information pursuant to § 242.902 using codes in place of certain data elements, provided that the information necessary to interpret such codes is widely available on a non-fee basis.''

[654] *See supra* Section IV (discussing Rule 901(h)). *See also* Rule 907(a)(5) (requiring a registered SDR to establish and maintain policies and procedures for assigning UICs in a manner consistent with Rule 903); Rule 907(a)(2) (requiring a registered SDR to establish and maintain policies and procedures that specify, among other things, protocols for submitting information, including but not limited to UICs).

[655] *See* Bloomberg Letter at 2.

[656] *Id.*

[657] *Id.*

[658] *See supra* notes 615 to 618 and accompanying text.

[659] *See* ISDA/SIFMA I at 8.

[660] *See supra* Section X(B)(1).

conventions; the Commission believes instead that greater expertise in coding data will reside in the industry and, in particular, at registered SDRs. The Commission further believes that Rule 900(qq), which defines ''UIC,'' and Rule 903, which establishes standards for the use of UICs provide adequate parameters for the development of a UIC system. The Commission believes that allowing the industry to develop conventions for assigning UICs will likely result in a more efficient and flexible UIC regime than if the Commission were to adopt such conventions itself.

XI. Operating Hours of Registered SDRs—Rule 904

Title VII of the Dodd-Frank Act does not explicitly address or prescribe the hours of operation of the reporting and public dissemination regime that it requires. The security-based swap market is global in nature, and security-based swaps are executed throughout the world and at any time of the day. In light of the global nature of the security-based swap market, the Commission believes that the public interest is served by requiring near-continuous reporting and public dissemination of security-based swap transactions, no matter where or when they are executed (subject to the cross-border rules discussed in Section XV, *infra*). Furthermore, having a near-continuous reporting and public dissemination regime would reduce the incentive for market participants to defer execution of security-based swap transactions until after regular business hours to avoid post-trade transparency. Accordingly, the Commission proposed Rule 904, which would have required a registered SDR to design its systems to allow for near-continuous receipt and dissemination of security-based swap data. A registered SDR would have been permitted to establish ''normal closing hours'' and to declare, on an *ad hoc* basis, ''special closing hours,'' subject to certain requirements. Rule 904 was not revised as part of the Cross-Border Proposing Release, and was re-proposed in exactly the same form as initially proposed.

As discussed below, three commenters addressed proposed Rule 904. The Commission has carefully reviewed the comments received and has determined to adopt Rule 904, as proposed and re-proposed, subject to one conforming change, as discussed below.[661]

Rule 904, as adopted, requires a registered SDR to have systems in place to receive and disseminate information regarding security-based swap data on a near-continuous basis, with certain exceptions. First, under final Rule 904(a), a ''registered SDR may establish normal closing hours when, in its estimation, the U.S. market and major foreign markets are inactive.'' Second, under final Rule 904(b), a registered SDR ''may declare, on an *ad hoc* basis, special closing hours to perform system maintenance that cannot wait until normal closing hours.'' Rule 904(b) further provides that a registered SDR shall, ''to the extent reasonably possible under the circumstances, avoid scheduling special closing hours during [periods] when, in its estimation, the U.S. market and major foreign markets are most active.'' Rules 904(a) and 904(b) each require the registered SDR to provide participants and the public with reasonable advance notice of its normal closing hours and special closing hours, respectively.

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

As proposed and re-proposed, Rule 904(e) would have provided that if a participant could not fulfil a reporting obligation due to a registered SDR's inability to receive and hold data in queue, the participant would be required to report the information ''immediately'' upon receiving a notification that the registered SDR has resumed normal operations. The Commission has decided to replace the word ''immediately'' with the word ''promptly'' in the final rule because ''promptly'' emphasizes the need for information to be submitted without unreasonable delay while affording participants a practical degree of flexibility. In general, the Commission believes that submitting a required report ''promptly'' implies ''as soon as practicable.''

The three commenters that addressed Rule 904 were generally supportive of the goal of promoting transparency and price discovery though a regime of continuous reporting and public dissemination,[662] although one of these commenters pointed out the need for registered SDRs to close periodically to perform necessary system maintenance.[663] Two of these commenters also suggested alternative operating hours and procedures for registered SDRs.[664] One commenter stated that the requirements that a registered SDR have normal closing hours only when neither U.S. nor international markets are active, and should continue to receive the relevant transaction data and hold them in queue even when the registered SDR is closed for normal or *ad hoc* special closing hours, exceeded the capabilities of currently existing reporting infrastructures. The commenter argued that such requirements would increase the risk of infrastructure failure because SDRs would not have adequate time to maintain and update their systems.[665] This commenter suggested that, if systems are required to be available on a 24-hour basis, the Commission should define operating hours to be 24 hours from Monday to Friday, and consider allowing additional closing hours either ''when markets are less active'' or ''when only less active markets are open.''[666]

The Commission believes there are compelling reasons to implement a system of reporting and public dissemination that, in general, operates near-continuously. As discussed above,

[661] In addition, the Commission is making a technical conforming change to revise the title of the rule to refer to ''registered'' SDRs.

[662] *See* Barnard I at 3; Markit I at 1; DTCC II at 1.

[663] *See* Markit I at 4.

[664] *See* Markit I at 4–5; DTCC II at 19–20; DTCC IV at 4 (recommending that SDRs operate on a 24/6.5 basis to reflect the global nature of the financial markets and process transactions in real time, while also maintaining multiple levels of operational redundancy and data security).

[665] *See* Markit I at 4.

[666] Markit I at 4–5.

the Commission believes that requiring near-continuous reporting and public dissemination of security-based swaps—except for when, in the estimation of a registered SDR, the U.S. market and major foreign markets are inactive—will serve the public interest and reduce incentives for market participants to trade outside of regular business hours. The Commission, however, recognizes the need for a registered SDR to have closing hours to maintain and update its systems, and Rules 904(a) and 904(b), as adopted, specifically allow registered SDRs to have normal and special closing hours. Further, while Rule 904(b) states that a registered SDR should avoid scheduling special closing hours during a time when, in its estimation, the U.S. and major foreign markets are most active, the Commission notes that a registered SDR is required to do so only ''to the extent reasonably possible under the circumstances.'' As such, the Commission believes that Rules 904(a) and 904(b) provide sufficient flexibility to registered SDRs in determining their closing times to perform the necessary maintenance procedures. The Commission does not believe it would be appropriate to require registered SDRs to operate 24 hours only from Monday to Friday, as the commenter suggests, as certain major foreign markets may be active during hours that fall within the weekend in the United States.

The Commission recognizes the commenter who asserted that the proposed requirement for a registered SDR to receive and hold in the queue the data required to be reported during its closing hours ''exceeds the capabilities of currently-existing reporting infrastructures.'' [667] The Commission notes that this comment was submitted in January 2011. Since that time, however, provisionally registered CFTC SDRs that are likely also to register as SDRs with the Commission appear to have developed the capability of receiving and holding data in queue during their closing hours.[668] Accordingly, the Commission believes that it is appropriate to require registered SDRs to hold data in queue during their closing hours should help to prevent market disruptions by enabling reporting sides for security-based swaps to report transactions at all times.

XII. Subsequent Revisions to Reported Security-Based Swap Information

A. Reporting Life Cycle Events—Rule 901(e)

1. Description of Proposal and Re-Proposal

Rule 901(e), as proposed and re-proposed, would have required the reporting of certain life cycle event information. ''Life cycle event'' was defined in the proposal and re-proposal to mean ''with respect to a security-based swap, any event that would result in a change in the information reported to a registered security-based swap data repository under § 242.901, including a counterparty change resulting from an assignment or novation; a partial or full termination of the security-based swap; a change in the cash flows originally reported; for a security-based swap that is not cleared, any change to the collateral agreement; or a corporate action affecting a security or securities on which the security-based swap is based (*e.g.,* merger, dividend, stock split, or bankruptcy). Notwithstanding the above, a life cycle event shall not include the scheduled expiration of the security-based swap, a previously described and anticipated interest rate adjustment (such as a quarterly rate adjustment), or other event that does not result in any change to the contractual terms of the security-based swap.''

Re-proposed Rule 901(e) would have provided that ''For any life cycle event, and any adjustment due to a life cycle event, that results in a change to information previously reported pursuant to Rule 901(c), 901(d), or 901(i), the reporting side shall promptly provide updated information reflecting such change to the entity to which it reported the original transaction, using the transaction ID,'' subject to two exceptions. Under Rule 901(e)(1), as re-proposed, if the reporting side ceased to be a counterparty to the security-based swap due to any assignment or novation and if the new side included a U.S. person, a security-based swap dealer, or a major security-based swap participant, the new side would be the reporting side following the assignment or novation. Under re-proposed Rule 901(e)(2), if the new side did not include a U.S. person, a security-based swap dealer, or a major security-based swap participant, the other side would be the reporting side following the assignment or novation.

In proposing Rule 901(e), the Commission preliminarily believed that the reporting of life cycle event information would provide regulators with access to information about significant changes that occur over the duration of a security-based swap.[669] The Commission also stated that the reporting of life cycle event information would help to assure that regulators have accurate and up-to-date information concerning outstanding security-based swaps and the current obligations and exposures of security-based swap counterparties.[670]

In determining the entity that would be required to report life cycle event information, the Commission's approach in proposing and re-proposing Rule 901(e) was that, generally, the person who originally reported the initial transaction would have the responsibility to report any subsequent life cycle event.[671] However, if the life cycle event were an assignment or novation that removed the original reporting party, either the new counterparty or the remaining original counterparty would have to be the reporting party.[672]

In re-proposing Regulation SBSR, the Commission included the new concept of a ''reporting side,'' which would have included the direct counterparty and any indirect counterparty. The Cross-Border Proposing Release also proposed to impose greater duties to report transactions on non-U.S. person security-based swap dealers or major security-based swap participants. Accordingly, the Commission re-proposed Rule 901(e) to provide that the duty to report would switch to the other side only if the new side did not include a U.S. person (as in the originally proposed rule) or a security-based swap dealer or major security-based swap participant. The Commission preliminarily believed that, if the new side included a security-based swap dealer or major security-based swap participant, the new side should retain the duty to report. This approach was designed to align reporting duties with the market participants that the Commission believed would be better

[667] Markit I at 4.

[668] *See, e.g.,* DDR Rulebook, Section 7.1 (DDR System Accessibility) (''Data submitted during DDR System down time is stored and processed once the service has resumed''), available at *http://www.dtcc.com/~/media/Files/Downloads/legal/rules/DDR_Rulebook.pdf* (last visited October 7, 2014).

[669] *See* Regulation SBSR Proposing Release, 75 FR 75220.

[670] *See id.* In a separate rulemaking, the Commission is adopting a rule that will require a registered SDR to establish, maintain, and enforce written policies and procedures reasonably designed to calculate positions for all persons with open security-based swaps for which the SDR maintains records. *See* SDR Adopting Release (adopting Rule 13n–5(b)(2) under the Exchange Act).

[671] *See* Cross-Border Proposing Release, 78 FR 31068.

[672] Rule 901(e), as initially proposed, would have provided that the new counterparty would be the reporting party if it is a U.S. person; the other original counterparty would become the reporting party if the new counterparty is not a U.S. person.

suited to carrying them out, because non-U.S. person security-based swap dealers and major security-based swap participants likely would have taken significant steps to establish and maintain the systems, processes and procedures, and staff resources necessary to report security-based swaps.[673]

2. Final Rules Relating to Life Cycle Events and Response to Comments

a. General Comment and Definition of ''Life Cycle Event''

One commenter expressed support for the requirement to report life cycle event information, stating that the reporting of life cycle event information was necessary for detailed market regulation and for prudential and central bank regulation.[674] The commenter noted that ''[m]any life cycle events are price-forming or significantly change the exposures under a trade. . . .''[675] In subsequent comment letters, this commenter stated that the definition of ''life cycle event'' was overly broad, and that life cycle events should be limited to those that impact the counterparties to or the pricing of the security-based swap.[676] Specifically, the commenter suggested that the Commission define ''life cycle event'' to mean ''an event that would result in a change in the counterparty or price of a security-based swap reported to the registered [SDR].''[677] However, another commenter believed that the proposed definition was ''clear, sufficient, and complete.''[678]

After careful consideration, the Commission is adopting the definition of ''life cycle event'' in Rule 900(q) substantially as re-proposed, but with certain minor modifications to respond to comments and to clarify the original intent of the rule.[679] First, the Commission is making a technical change to the definition to indicate that a life cycle event refers to any event that would result in a change in the information reported ''under § 242.901(c), (d), or (i),'' rather than any event that would result in a change in the information reported ''under § 242.901'' (as re-proposed). This technical change will conform the definition of ''life cycle event'' to the requirements of Rule 901(e), as re-proposed and as adopted, which requires the reporting of a change to information previously reported pursuant to paragraph (c), (d), or (i) of Rule 901. By defining ''life cycle event'' in this manner, the Commission aims to ensure that information reported pursuant to Rules 901(c), (d), and (i) is updated as needed, so that the data maintained by registered SDRs remains current for the duration of a security-based swap. This requirement should help to ensure that the data accessible to the Commission through registered SDRs accurately reflects the current state of the market. Therefore, the Commission does not believe that it is appropriate to limit the definition of ''life cycle event'' to post-execution events that impact the counterparties to or the pricing of a security-based swap, as suggested by the commenter.[680] Although the final definition of ''life cycle event'' encompasses these types of events, it also encompasses other information reported pursuant to Rules 901(c), 901(d), or 901(i).

One commenter asked that the Commission remove the reference to ''dividends'' in the definition of ''life cycle event'' because dividends ''are contract intrinsic events that do not result in a change to the contractual terms of the SBS and therefore, should not be defined as reportable life cycle events.''[681] The Commission does not believe that it is necessary to revise the definition of ''life cycle event'' as the commenter suggests. As indicated above, the definition of ''life cycle event'' provides, in relevant part, that a life cycle event includes ''any event that would result in a *change* in the information reported to a registered [SDR] . . . including . . . a corporate action affecting a security or securities on which the security-based swap is based (*e.g.,* a merger, dividend, stock split, or bankruptcy)'' (emphasis added). Thus, a regular payment of a dividend that does not require a restatement of the terms of the security-based swap would not constitute a life cycle event. However, other actions involving dividends could be life cycle events. For example, the distribution of a stock dividend that required an adjustment to the notional terms of an equity security-based swap—or any other corporate action related to dividends that resulted in a modification of one or more terms of the security-based swap—would be a life cycle event and therefore would have to be reported pursuant to Rule 901(e).

Second, the Commission is clarifying that a life cycle event includes ''an assignment or novation of the security-based swap,'' instead of ''a counterparty change resulting from an assignment or novation.'' The Commission notes that, while assignments and novations necessarily include a counterparty change, assignments and novations also may involve modifications to other terms of the security-based swap reported pursuant to paragraphs (c), (d), or (i) of Rule 901. These modifications are the type of changes that the Commission believes should be reported to a registered SDR; therefore, the Commission is modifying the definition of ''life cycle event'' to clarify this view.

Third, the Commission is making a technical change to the definition to indicate that a life cycle event includes, for a security-based swap that is not a clearing transaction, ''any change to the title or date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract.'' As re-proposed, the definition of ''life cycle event'' would have included, ''for a security-based swap that is not cleared, any change to the collateral agreement.'' One commenter questioned the need to include a reference to a change in the collateral agreement in the definition of ''life cycle event'' because ''collateral agreement terms are not among the data required to be reported upon execution.''[682] The Commission agrees with the commenter that collateral agreement terms are not

[673] *See* Cross-Border Proposing Release, 78 FR 31068.

[674] *See* DTCC II at 13.

[675] *See id.*

[676] *See* DTCC V at 11; DTCC VI at 9.

[677] DTCC VI at 9.

[678] Barnard I at 3.

[679] Rule 900(q), as adopted, defines ''life cycle event'' to mean ''with respect to a security-based swap, any event that would result in a change in the information reported to a registered security-based swap data repository under § 242.901(c), (d) or (i), including: An assignment or novation of the security-based swap; a partial or full termination of the security-based swap; a change in the cash flows originally reported; for a security-based swap that is not a clearing transaction, any change to the title or date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract; or a corporate action affecting a security or securities on which the security-based swap is based (*e.g.,* a merger, dividend, stock split, or bankruptcy). Notwithstanding the above, a life cycle event shall not include the scheduled expiration of the security-based swap, a previously described and anticipated interest rate adjustment (such as a quarterly interest rate adjustment), or other event that does not result in any change to the contractual terms of the security-based swap.''

[680] *See* DTCC VI at 9. *See also* DTCC II at 13 (stating that ''[m]any life cycle events are price-forming or significantly change the exposures under a trade. . . . The current definition supports reporting of these events'').

[681] ISDA IV at 11.

[682] DTCC VI at 9. Another commenter stated that the parties to a collateral agreement rarely modify their agreement over its life, and that any change to a collateral agreement would require extensive negotiation between the counterparties. Accordingly, the commenter believed that the cost of establishing reporting processes to detect and report changes to a collateral agreement would outweigh the usefulness of reporting them. *See* ISDA/SIFMA I at 16.

required to be reported, and the definition of ''life cycle event'' in final Rule 900(q) no longer refers to changes in the collateral agreement. To assure that Rule 901(e) operates as intended, the Commission has modified the definition of ''life cycle event'' in final Rule 900(q) to reference, with respect to a security-based swap that is not a clearing transaction, the same terms that must be reported pursuant to Rule 901(d)(4).[683] Thus, if there were a change in the title or date of a master agreement, collateral agreement, margin agreement, or other agreement incorporated by reference into a security-based swap contract, such a change would be a ''life cycle event'' as defined in final Rule 900(q), and final Rule 901(e) would require reporting of that change.

Finally, two commenters argued that the ''Commission's classification of a swap being accepted for clearing as a life cycle event is inconsistent with the operations of a Clearing Agency'' because clearing may require the ''termination of the pre-existing alpha swap in order to create two new, unique swaps.'' [684] The Commission agrees that any security-based swap that results from clearing an alpha should not be considered a life cycle event of the alpha, although the termination of the alpha would be such a life cycle event.[685] The Commission believes that the new term ''clearing transaction'' makes clear that security-based swaps that result from clearing (*e.g.*, betas and gammas in the agency model) are independent security-based swaps, not life cycle events of the security-based swap that is submitted to clearing (*e.g.*, alpha security-based swaps).

b. Final Rule 901(e)(1)

As described above, re-proposed Rule 901(e) would have required the reporting side to promptly report any life cycle event, or any adjustment due to a life cycle event, that resulted in a change to information previously reported pursuant to Rule 901(c), (d), or (i) to the entity to which it reported the original transaction, using the transaction ID. Rule 901(e), as proposed and re-proposed, also included provisions for determining which counterparty would report the life cycle event. The Commission is adopting a modified version of Rule 901(e) to address comments received and to implement certain technical changes. The Commission also has changed the title of the rule from ''Duty to report any life cycle event of a security-based swap'' in the re-proposal to ''Reporting of life cycle events'' in the final rule. In addition, final Rule 901(e) provides that a life cycle event or adjustment due to a life cycle event must be reported within the timeframe specified in Rule 901(j).

Although the definition of ''life cycle event'' would encompass the disposition of a security-based swap that has been submitted to clearing (*e.g.*, whether, under the agency model of clearing, the alpha security-based swap has been accepted for clearing or rejected by the clearing agency), the Commission believes that it is appropriate to address the reporting of this specific type of life cycle event in the context of the Regulation SBSR Proposed Amendments Release, which address a number of topics regarding the reporting of security-based swaps that will be submitted to clearing or that have been cleared. Accordingly, final Rule 901(e)(1)(i) indicates that the reporting side shall not have a duty to report whether or not a security-based swap has been accepted for clearing or terminated by a clearing agency, and instead provides that ''A life cycle event, and any adjustment due to a life cycle event, that results in a change to information previously reported pursuant to paragraph (c), (d), or (i) of this section shall be reported by the reporting side, except that the reporting side shall not report whether or not a security-based swap has been accepted for clearing.''

c. Final Rule 901(e)(2)

Re-proposed Rule 901(e) would have required the reporting side to include the transaction ID in a life cycle event report, and to report life cycle event information to the entity to which it reported the original transaction. Final Rule 901(e)(2) retains both of these requirements.[686] The Commission believes that including the transaction ID in a life cycle event report will help to ensure that it is possible to link the report of a life cycle event to the report of the initial security-based swap of which it is a life cycle event. One commenter supported the requirement to report life cycle events to the same entity that received the original transaction report.[687] The commenter stated that requiring a single registered SDR to receive, store, and report, where appropriate, all relevant information related to a given security-based swap throughout its life cycle would help to prevent fragmentation and ensure that corrections to previously reported data could be easily identified by the public.[688] The Commission generally agrees with these views, and final Rule 901(e)(2) retains the requirement to report life cycle events to the same entity to which the original transaction was reported.

d. Reporting Timeframe for Life Cycle Events

Rule 901(e), as proposed and re-proposed, would have required life cycle events to be reported by the reporting side ''promptly.'' Two commenters believed that it was appropriate to require that life cycle events be reported ''promptly.'' [689] One of these commenters also stated that life cycle events could require different processing times based on the nature of the event, and asked the Commission to clarify the meaning of ''promptly'' with respect to life cycle event reporting.[690] In particular, the commenter stated that ''the term 'promptly,' . . . without further explanation, may be interpreted by reporting parties differently for similar events and processes, particularly in a market where certain processes have historically taken a

[683] Final Rule 901(d)(4) requires, for a security-based swap that is not a clearing transaction, reporting of the title and date of any master agreement, collateral agreement, margin agreement, or other agreement incorporated by reference in the security-based swap contract.

[684] CME/ICE Letter at 3. As discussed in Section V, *supra*, in the agency model of clearing, and sometimes in the principal model as well, acceptance of an alpha for clearing terminates the alpha.

[685] *See* Securities Exchange Act Release No. 66703 (March 30, 2012), 77 FR 20536–37 (April 5, 2012) (noting that ''when a security-based swap between two counterparties . . . is executed and submitted for clearing, the original contract is extinguished and replaced by two new contracts where the [clearing agency] is the buyer to the seller and the seller to the buyer''). This treatment also would be consistent with CFTC regulations. *See* 17 CFR 39.12(b)(6) (CFTC rule providing that derivatives clearing organizations that clear swaps must have rules providing that, among other things, ''upon acceptance of a swap by the derivatives clearing organization for clearing: (i) The original swap is extinguished; [and] (ii) The original swap is replaced by an equal and opposite swap between the derivatives clearing organization and each clearing member acting as principal for a house trade or acting as agent for a customer trade'').

[686] Final Rule 901(e)(2) provides that ''All reports of life cycle events and adjustments due to life cycle events shall be reported within 24 hours of the time of occurrence of the life cycle event to the entity to which the original security-based swap transaction was reported and shall include the transaction ID of the original transaction.''

[687] *See* MarkitSERV I at 8.

[688] *See id. See also* DTCC IX at 2.

[689] *See* Barnard I at 3; DTCC II at 13.

[690] *See* DTCC II at 13. The commenter stated that life cycle events that are price-forming events subject to confirmation could be reported within the same timeframes as initial reports of these events. However, the commenter indicated that life cycle events resulting from other processes, such as corporate actions or credit events, ''where many trades will be impacted simultaneously and processing may be manual or automated,'' would require different amounts of time to report. *See id.*

number of days to effect.'' [691] This commenter also suggested that the Commission revise Rule 901(e) to allow for the flexibility of reporting life cycle events either event-by-event or through one daily submission that would include multiple events.[692] Another commenter stated that the required time for reporting both life cycle events and corrections should be stronger and more specific than the proposed requirement that they be reported ''promptly.'' [693]

After careful consideration, the Commission does not believe that it would be appropriate to require life cycle events or adjustments due to life cycle events to be reported more quickly than the time within which information relating to the original transaction must be reported. As noted in Section VII(B)(3), *supra*, final Rule 901(j) provides that the transaction information required by Rules 901(c) and 901(d) generally must be reported within 24 hours of the time of execution. Similarly, Rule 901(j) provides that the reporting timeframe for Rule 901(e) shall be 24 hours after the occurrence of the life cycle event or the adjustment due to the life cycle event. The Commission believes that 24 hours should provide sufficient time to report life cycle events even if the processing of some of these events is not yet fully automated.[694] The Commission believes, further, that specifying a time within which life cycle event information must be reported will address the commenter's concern that reporting sides could adopt different interpretations of the reporting timeframe. The Commission notes that it anticipates soliciting comment on the timeframe for reporting life cycle events, adjustments, and clearing transactions in the future, when it considers block thresholds and time delays.

e. Re-Proposed Rule 901(e)(2)

The Commission has determined not to adopt re-proposed Rule 901(e)(2), which would have specified the reporting side following an assignment or novation of the security-based swap.[695] One commenter noted that, under the current market practice for reporting novations, the reporting party is re-determined based on the current status of the parties.[696] This commenter noted that the current practice allows the reporting party logic to be consistent for new as well as novated trades, and recommended that the Commission use a consistent methodology for reporting of new trades and novations. The Commission agrees that using a single methodology for assigning reporting obligations would be administratively easier than using one methodology when a security-based swap is first executed and a different methodology when the counterparties change as a result of an assignment or novation. As the Commission explained above,[697] it has determined that the reporting side following an assignment or novation will be determined using the procedures in Rule 901(a).

f. Additional Comments Regarding Life Cycle Event Reporting

One commenter believed that life cycle events should be reported using standard market forms, such as the trade confirmation for novations and early terminations, and the exercise notice for an exercise.[698] Contrary to the commenter's suggestion, the Commission believes that registered SDRs should be responsible for specifying the precise manner and format for reporting data. Moreover, the Commission understands that standard market forms may exist for some, but not all, of the life cycle events that must be reported under Regulation SBSR. Therefore, the Commission has determined not to prescribe a format for reporting sides to report life cycle event information. Instead, Rule 907(a)(3), as adopted, requires a registered SDR to establish and maintain written policies and procedures that specify how reporting sides are to report life cycle events and corrections to previously submitted information, for making corresponding updates or corrections to transaction records, and for applying an appropriate flag to these transaction reports.[699]

One commenter stated that it was critical for the SEC and the CFTC to adopt consistent regulatory approaches ''[i]n the life cycle event model across asset classes.'' [700] The Commission agrees that would be useful for the Commissions to adopt consistent approaches to the reporting of life cycle event information to the extent possible. The Commission believes that Regulation SBSR's approach to life cycle event reporting is broadly consistent with the approach taken by the CFTC. For example, because the agencies have adopted similar definitions, the life cycle event information required to be reported under the rules of both agencies is substantially similar.[701] In addition, both agencies' rules require that life cycle events be reported to the same entity that received the report of the original transaction, and both agencies' rules require the entity that reports the initial transaction to also report life cycle events for the transaction. The Commission notes that a registered SDR that accepts transaction reports for both swaps and security-based swaps could establish policies and procedures for reporting life cycle events of security-based swaps that are comparable to its policies and

[691] DTCC II at 13.

[692] *See* DTCC V at 11. *See also* ISDA III (requesting that ''reporting parties be allowed to report lifecycle events either intra-day or as an end-of day [*sic*] update to the terms of the [security-based swap]''). Further, one commenter noted that the CFTC rules allow a life cycle event to be reported either as event data on the same day as the event occurs or daily as ''state data,'' and that non-swap dealers or non-major swap participants may report these events either as life cycle event data or as state data no later than the end of the first business day following the event. *See* ISDA IV at 11. This commenter requested that the Commission confirm in its rules that the same approach and timelines may be applied to meet the requirements of Regulation SBSR. The Commission notes that Rules 901(e) and 901(j), as adopted, provide for reporting of a life cycle event or an adjustment due to a life cycle event within 24 hours after the occurrence of the life cycle event or the adjustment due to the life cycle event. The Commission notes, further, that Rule 901(e)(1) requires the reporting of a life cycle event, and any adjustment due to a life cycle event, that results in a *change* to information previously reported pursuant to Rule 901(c), 901(d), or 901(i). Thus, Rule 901(e)(1) contemplates the reporting of the specific changes to previously reported information. Reports of life cycle events, therefore, must clearly identify the nature of the life cycle event for each security-based swap. It is not sufficient merely to re-report all of the terms of the security-based swap each day without identifying which data elements have changed. However, Regulation SBSR would not prevent a registered SDR from developing for its members a mechanism or other service that automates or facilitates the production of life cycle events from state data.

[693] *See* Better Markets I at 9.

[694] *See* DTCC II at 13. The Commission also believes that the 24-hour timeframe for reporting life cycle events will allow reporting sides to determine whether to report life cycle events on an intra-day or end-of-day basis. *See* DTCC V at 11; ISDA III. Reports of life cycle events, however, must clearly identify the nature of the life cycle event for each security-based swap. It is not sufficient merely to re-report all of the terms of the security-based swap each day without identifying which data elements have changed. *See also* note 692 *supra*.

[695] Re-proposed Rule 901(e)(2) would have provided that the duty to report life cycle event information following an assignment or novation would switch to the other side only if the new side did not include a U.S. person (as in the originally proposed rule) or a security-based swap dealer or major security-based swap participant. As the Commission explained in the Cross-Border Proposing Release, if the new side included a security-based swap dealer or major security-based swap participant, the new side should retain the duty to report. *See* 78 FR 31068.

[696] *See* ISDA III.

[697] *See supra* Section V(C)(5).

[698] *See* DTCC II at 13.

[699] *See infra* Section XII(C).

[700] ISDA/SIFMA I at 6.

[701] *See* CFTC Rule 45.1, 17 CFR 45.1. The Commissions' ongoing reporting requirements differ, however, with respect to the reporting of valuation information. The CFTC's rules require reporting of valuation data as well as life cycle event data. As discussed in above in Section II(B)(3)(k), the Commission is not requiring reporting of valuation data for security-based swaps.

procedures for reporting life cycle events of swaps, provided that its policies and procedures for reporting life cycle events of security-based swaps comply with the requirements of Regulation SBSR.

Another commenter expressed the view that Regulation SBSR ''should clarify what shall be reported as the *time of execution* for a life cycle event for purposes of public dissemination.'' [702] The commenter stated that the CFTC requires market participants to report the execution time of the original trade as the execution time for a life cycle event for the trade. The commenter suggested that, under this approach, ''the data that is publicly disseminated for lifecycle events may not be that meaningful to the public as it does not include any indication of the point in time the reported price has been traded.'' [703] The commenter stated, further, that the time of execution for a life cycle event for purposes of public dissemination ''should be the date and time such price-forming event is agreed.'' [704]

As discussed in Section VII(B)(3), *supra*, final Rule 901(j) provides that the reporting timeframe for a life cycle event shall be 24 hours after the occurrence of the life cycle event or the adjustment due to the life cycle event. Final Rule 902(a) requires a registered SDR to publicly disseminate a transaction report of a life cycle event, or adjustment due to a life cycle event, immediately upon receipt of the information. Thus, under Regulation SBSR, a life cycle event, or an adjustment due to a life cycle event, must be reported and publicly disseminated within 24 hours after the occurrence of the life cycle event or adjustment due to the life cycle event. The Commission believes that together these requirements will provide market observers with certain information concerning the time when the life cycle event occurred. However, the Commission notes that Regulation SBSR, as proposed and re-proposed, did not require the reporting or public dissemination of the time of execution of a life cycle event, and Regulation SBSR, as adopted, likewise includes no such requirements.

B. Error Corrections—Rule 905

As the Commission noted in the Regulation SBSR Proposing Release, any system for transaction reporting must accommodate the possibility that certain data elements may be incorrectly reported.[705] Therefore, the Commission proposed Rule 905 to establish procedures for correcting errors in reported and disseminated security-based swap information.

In the Cross-Border Proposing Release, the Commission modified proposed Rule 905 slightly to correspond with certain new provisions in re-proposed Rule 908, which contemplated that certain types of cross-border security-based swaps would be required to be reported but not publicly disseminated. Rule 905 was re-proposed to clarify that, if a registered SDR receives corrected information relating to a previously submitted transaction report, it would be required to publicly disseminate a corrected transaction report only if the initial security-based swap were subject to the public dissemination requirement.[706] The Commission also made certain other technical and conforming changes,[707] but otherwise re-proposed Rule 905 was substantially similar to proposed Rule 905.

As discussed below, the Commission received several comments on proposed Rule 905. After consideration of the comments, the Commission has determined to adopt Rule 905 with certain minor editorial revisions.[708]

Rule 905(a) applies to any counterparty to a security-based swap that discovers an error in the information reported with respect to that security-based swap. If a non-reporting side discovers the error, the non-reporting side shall promptly notify the reporting side of the error. Once the reporting side receives notification of the error from the non-reporting side, or if the reporting side discovers the error on its own, the reporting side must promptly submit an amended report—containing corrected data—to the registered SDR that received the erroneous transaction report. The reporting side must submit the report required by Rule 905(a) in a manner consistent with the policies and procedures of the registered SDR that are contemplated by Rule 907(a)(3).[709]

Rule 905(b) details the responsibilities of a registered SDR to correct information and re-disseminate corrected information, where appropriate. If a registered SDR either discovers an error in the security-based swap information or receives notification of an error from a reporting side, the registered SDR is required to verify the accuracy of the terms of the security-based swap and, following such verification, promptly correct the information in its system. If the erroneous information contains any primary trade information enumerated in Rule 901(c) (and the transaction is dissemination-eligible [710]), the registered SDR must publicly disseminate a corrected transaction report of the security-based swap promptly following verification of the trade by the counterparties to the security-based swap, with an indication that the report relates to a previously disseminated transaction.[711]

Three commenters were generally supportive of the proposed error reporting procedures. One commenter believed that publicly disseminating error reports would ''increase confidence in the integrity of the markets.'' [712] Another commenter stated that it supported ''the objective of prompt correction of errors by the reporting party.'' [713] A third commenter expressed support for requiring a reporting party to correct previously reported erroneous data, and agreed that it was appropriate for a non-reporting counterparty to have the obligation to notify the reporting party of an error of which it is aware.[714]

[702] ISDA IV at 13 (emphasis in original).

[703] *Id.*

[704] *Id.* at 13–14.

[705] *See* 75 FR 75236.

[706] As discussed above in Section VI, Rule 902 requires a registered SDR to immediately publicly disseminate a transaction report of a security-based swap, or a life cycle event or adjustment due to a life cycle event. If a security-based swap falls into the category of regulatory reporting but not public dissemination, there would be no need to publicly disseminate the correction because the initial security-based swap was not publicly disseminated.

[707] The Commission modified the language from ''counterparty'' or ''party'' to ''side'' in the re-proposal of Rule 905. Additional minor changes were made for clarification such as inserting ''transaction'' in Rule 905(a)(1) and changing an ''a'' to ''the'' in Rule 905(b)(1). Re-proposed Rule 905 also substitutes the word ''counterparties''—which is a defined term in Regulation SBSR—for the word ''parties,'' which was used in the initial proposal but was not a defined term.

[708] For example, the title of final Rule 905(a) is ''Duty to correct,'' rather than ''Duty of counterparties to correct.'' In addition, the Commission is deleting a reference to ''security-based swap transaction'' from Rule 905(a)(2), as well as a reference to ''reporting side'' in Rule 905(b)(1).''

[709] *See infra* Section XII(C).

[710] *See* Rule 902(c) (listing certain transactions that a registered SDR may not publicly disseminate).

[711] *See* Rule 905(b)(2). When verifying information pursuant to Rule 905(b), a registered SDR must comply with the standards of Rule 13n–5. In particular, Rule 13n–5(b)(1)(iii) provides that an SDR ''shall establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the security-based swap data repository is complete and accurate, and clearly identifies the source for each trade side and the pairing method (if any) for each transaction in order to identify the level of quality of the transaction data.''

[712] Barnard I at 3.

[713] ISDA/SIFMA I at 9.

[714] *See* MFA I at 5.

The third commenter also sought guidance regarding the application of Rule 905 if a dispute arose between a reporting side and non-reporting side concerning whether a report was, in fact, erroneous.[715] The commenter urged the Commission to provide in its final rule that, if corrected information is not promptly reported to the registered SDR because of a dispute over whether an error exists, the non-reporting party side may itself report the disputed data to the registered SDR; the commenter believed that, in such cases, the Commission should oblige the registered SDR to review promptly the disputed data with the counterparties.[716]

The Commission notes that, in a separate release, it is adopting Rule 13n–5(b)(6) under the Exchange Act, which requires an SDR to establish procedures and provide facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions that are recorded in the SDR.[717] As the Commission notes in adopting that rule, only the parties to a dispute can resolve it. Thus, the SDR itself is not required to resolve the dispute, although the Commission believes that SDRs must provide processes to facilitate resolution, which would improve the quality and accuracy of the security-based swap data that the SDR holds. The Commission is interpreting the term ''error'' in final Rule 905 as one which both sides to the transaction would reasonably regard as such. If the counterparties dispute whether an error exists, then the counterparties can use an SDR's procedures and facilities established under Rule 13n–5(b)(6) to attempt to resolve the dispute. If the dispute-resolution process under Rule 13n–5(b)(6) yielded agreement that an error exists, then Rule 905 would require the counterparties to correct the error.[718]

The third commenter also asked the Commission, in the context of Rule 905, to clarify that the reporting is for informational purposes and does not affect the terms of the trade; otherwise, ''[a]bsent some mechanism to make the report nonbinding pending a dispute, the correction mechanics in the Proposed Rule will result in the reporting party (typically the SBS dealer) prevailing in any dispute.'' [719] The Commission does not believe that reporting of an error in previously submitted security-based swap transaction information can change the terms of the trade. Reporting is designed to capture the terms of the trade, not to establish such terms. The Commission's expectation, however, is that the report of a security-based swap provided to and held by a registered SDR will reflect, fully and accurately, the terms of the trade agreed to by the counterparties. If a counterparty becomes aware that the record held by the registered SDR does not accurately reflect the terms of the trade, that counterparty incurs a duty under Rule 905 to take action to have that record corrected.

A fourth commenter argued that the specific root cause of such amendments (for example a booking error or a trade amendment between parties) could be omitted.[720] The Commission notes that Rule 905 does not require the reporting side to include the root cause of the error. This commenter also urged the Commission to clarify that reporting parties are not responsible for data that are inaccurately transcribed or corrupted after submission to the registered SDR. The Commission notes that the obligations under Rule 905 attach to a counterparty to a security-based swap only after that counterparty ''discovers'' the error or, if the counterparty is the reporting side, after it ''receives notification'' of the error from the non-reporting side.[721] Thus, a security-based swap counterparty incurs no duty under Rule 905 if its transaction data are inaccurately transcribed or corrupted after submission to the registered SDR *unless* the counterparty discovers the inaccurate transcription or corruption. Thus, under Rule 905, a counterparty would incur no duty to correct data errors of which it is unaware.[722]

Finally, a fifth commenter believed that Rule 905 should provide an error reporting timeframe that is stronger and more specific than the proposed requirement that such reports be submitted ''promptly.'' [723] The Commission continues to believe that ''promptly'' is an appropriate standard because it emphasizes the need for corrections to be submitted without unreasonable delay while affording reporting sides a practical degree of flexibility

C. Policies and Procedures for Reporting Life Cycle Events and Corrections

Rule 907(a)(3), as originally proposed, would have required a registered SDR to establish and maintain written policies and procedures for ''specifying how reporting parties are to report corrections to previously submitted information in its records that is subsequently discovered to be erroneous, and applying an appropriate indicator to any transaction report required to be disseminated by [Rule 905(b)(2)] that the report relates to a previously disseminated transaction.'' Rule 907(a)(3), as re-proposed, would have required a registered SDR to establish and maintain written policies and procedures for ''specifying how reporting sides are to report corrections to previously submitted information, making corrections to information in its records that is subsequently discovered to be erroneous, and applying an appropriate indicator to any report required to be disseminated by [Rule 905(b)(2)] that the report relates to a previously disseminated transaction.''

The Commission received no adverse comment on Rule 907(a)(3) and is adopting it as re-proposed with a slight modification. Rule 907(a)(3), as adopted, requires a registered SDR to establish and maintain policies and procedures for ''specifying procedures for reporting *life cycle events* and corrections to previously submitted information, making corresponding updates or corrections to transaction records, and applying an appropriate flag to the transaction report to indicate that the report is an error correction required to be disseminated by [Rule 905(b)(2)] or *is a life cycle event, or any adjustment due to a life cycle event, required to be disseminated by [Rule 902(a)]''* (emphasis added). The Commission is adding to final Rule 907(a)(3) the explicit requirement that a registered SDR establish and maintain policies and procedures regarding the reporting and flagging of life cycle events. The Commission believes that these

[715] *See id.*

[716] *See id.*

[717] *See* SDR Adopting Release.

[718] In the context of trade reporting, one commenter stated: ''Confirmation processes are designed to identify when economic terms to trades have changed, distinguishing between expected events under an existing confirmation and amendments of economic terms due to the modification in terms . . . The trade confirmation is a bilateral process in which both parties agree to the confirmation, thereby ensuring any errors in the original data are corrected.'' DTCC II at 5. The Commission believes that this comment supports the approach taken above, that counterparties to a transaction do not incur duties under Rule 905 unless an error is detected that both sides would regard as such.

[719] *Id.* at 5–6.

[720] *See* ISDA/SIFMA I at 9.

[721] Rule 905(a).

[722] The registered SDR, however, must comply with Rule 13n–5(b)(1)(iii) under the Exchange Act, which provides, in relevant part: ''Every security-based swap data repository shall establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the security-based swap data repository is complete and accurate.''

[723] *See* Better Markets I at 9.

additions will improve the ability of the Commission and other relevant authorities to identify and analyze life cycle events of security-based swaps.

In the case of a life cycle event or error correction, the initial transaction has already been reported to the registered SDR, and the subsequent report involves some type of revision to the previously submitted report. The Commission seeks to have the ability to observe a security-based swap transaction throughout its life, which requires the ability to connect subsequently reported events to the original transaction. The Commission also seeks to avoid mistaking life cycle events or corrections of previously submitted reports for new transactions, which could result in overcounting the gross notional amount of the security-based swap market or subsets thereof. Therefore, the Commission believes that registered SDRs must have appropriate policies and procedures that stipulate how reporting sides must report such follow-on events, and how the registered SDR itself can distinguish them and record them properly.

Just as the Commission believes that a registered SDR should be given reasonable flexibility to enumerate specific data elements to be reported and the method for reporting them, the Commission also believes that a registered SDR should be given reasonable flexibility regarding the handling of corrections to previously submitted information. As discussed above, final Rule 905 does not require the reporting side to report the cause of an error.[724] Nor does Rule 905 set forth a specific procedure for how a registered SDR must accept a report of a life cycle event or error correction. Accordingly, a registered SDR's policies and procedures under Rule 907(a)(3) could require resubmission of the entire record with or without an indication of which elements in that record had been revised. Alternatively, a registered SDR's policies and procedures could require a submission of only the data element or elements that had been revised. The Commission notes, however, that Rule 905(b)(2) requires a registered SDR to publicly disseminate a corrected transaction report of a security-based swap, if erroneously reported information relates to a security-based swap that had been publicly disseminated and falls into any of the categories of information enumerated in Rule 901(c). Therefore, a registered SDR will need to have a means of identifying changes in reported data so that it can identify the changed element or elements in the publicly disseminated correction report.

The Commission notes that Rule 907(a)(3) requires a registered SDR's policies and procedures also to address how the registered SDR will apply an appropriate condition flag to any corrected transaction report that must be re-disseminated. Market observers should be able to understand that a transaction report triggered by Rule 905(b)(2) or Rule 902(a) does not represent a new transaction, but merely a revision to a previous transaction. Without an indication to that effect, market observers could misunderstand the true state of the market.[725] To provide observers with a clear view of the market, public reports of life cycle events should allow observers to identify the security-based swap subject to the life cycle event. The Commission notes, however, that registered SDRs may not use the transaction ID for this function because the transaction ID is not a piece of ''information reported pursuant to [Rule 901(c)]'' or a condition flag.[726] Moreover, the Commission believes that knowledge of the transaction ID should remain limited to counterparties, infrastructure providers, and their agents, and should not be widely known. Knowledge of the transaction ID by additional parties could raise data integrity issues, as such additional parties could accidentally or even intentionally submit ''false corrections'' to the registered SDR regarding transactions to which they were never a counterparty. This could damage the otherwise accurate record of the original transaction. Screening out improperly submitted ''corrections''—or repairing damage to the registered SDR's records that a false correction might cause—could become a significant and unwanted burden on registered SDRs. Therefore, registered SDRs, in their policies and procedures under Rule 907(a)(3), will need to use some means other than the transaction ID to indicate that a publicly disseminated report triggered by Rule 905(b)(2) or Rule 902(a) pertains to a previously disseminated transaction.[727]

XIII. Other Duties of Participants

A. Duties of Non-Reporting Sides To Report Certain Information—Rule 906(a)

The Commission believes that a registered SDR generally should maintain complete information for each security-based swap reported to the registered SDR, including UICs for both sides of a transaction. Although Regulation SBSR generally takes the approach of requiring only one side to report the majority of the transaction information,[728] the Commission recognizes that it might not be feasible or desirable for the reporting side to report to a registered SDR all of the UICs of the non-reporting side. To address this issue, the Commission proposed Rule 906(a), which would provide a means for a registered SDR to obtain UICs from the non-reporting side.

Rule 906(a), as initially proposed, would have established procedures designed to ensure that a registered SDR obtains UICs for both direct counterparties to a security-based swap. As initially proposed, Rule 906(a) would have required a registered SDR to identify any security-based swap reported to it for which the registered SDR does not have the participant ID and (if applicable) the broker ID, desk ID, and trader ID of each counterparty. The registered SDR would have been required to send a report once a day to each of its participants identifying, for each security-based swap to which that

[724] *See supra* note 721 and accompanying text.

[725] One such condition flag could be for voided trades. There may be scenarios in which a security-based swap is executed (or thought to be executed), subsequently reported to a registered SDR, and publicly disseminated by that SDR—but later voided or canceled for some reason. For example, a transaction might be submitted to clearing but rejected by the clearing agency, and the counterparties could deem their agreement to be void *ab initio*. In this situation, the Commission believes the registered SDR could satisfy its obligation to publicly disseminate under Regulation SBSR by including a condition flag that the previously disseminated transaction report had been voided or canceled.

[726] *See* Rule 902(a).

[727] For example, DTCC Data Repository, LLC (''DDR'') utilizes an Event Identifier (''EID'') to maintain the integrity of a transaction throughout its lifecycle and enable public identification of events, including corrections, which occur with respect to the transaction. *See* DDR Rulebook, Section 4.1 at *http://dtcc.com/~/media/Files/Downloads/legal/rules/DDR_Rulebook.ashx*, last visited September 22, 2014. The EID is separate from the Unique Swap Identifiers (''USI''), which is the CFTC-equivalent of the transaction ID. *See also* ISDA/SIFMA I at 10 (recommending that initial trades should carry a ''primary reference number'' when disseminated, ''and all amendments of that trade would then produce iterations of the original reference number'').

[728] Section 13A(a)(3) of the Exchange Act, 15 U.S.C. 78m–1(a)(1), stipulates which counterparty must report a security-based swap that is not accepted by any clearing agency or derivatives clearing organization. That provision does not contemplate reporting by the other direct counterparty. Title VII does not stipulate who should report cleared security-based swaps. However, Section 13(m)(1)(F) of the Exchange Act, 15 U.S.C. 78m(m)(1)(F), provides that ''[p]arties to a security-based swap (including agents of the parties to a security-based swap) shall be responsible for reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.''

participant is a counterparty, the security-based swap(s) for which the registered SDR lacks participant IDs and (if applicable) a broker ID, desk ID, or trader ID. The participant would have been required to provide the missing information within 24 hours of receiving this report from the registered SDR.

When the Commission re-proposed Regulation SBSR as part of the Cross-Border Proposing Release, it made conforming changes to Rule 906(a) to reflect the introduction of the ''reporting side'' concept and to clarify that the participant ID, broker ID, desk ID, and trader ID must be reported only for direct counterparties.[729]

The Commission has decided to adopt Rule 906(a) substantially as re-proposed, with conforming changes related to including branch ID and execution agent ID among the UICs that must be provided to the registered SDR[730] and other minor technical changes.[731]

The Commission received two comment letters from the same commenter addressing proposed Rule 906(a). The first letter, which responded to the initial proposal, stated that regulators must have the UICs of both counterparties to a security-based swap to accurately track exposures.[732] The commenter believed that, ideally, this process would be supported electronically and that the use of third-party services should meet this requirement.[733]

The Commission generally shares the commenter's view that registered SDRs should maintain UICs for both sides of a security-based swap.[734] The Commission notes that Rule 901(d) requires the reporting side to report the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID—as applicable—only for the direct counterparty on its side. Rule 901(d)(1) requires the reporting side to report only the counterparty ID or execution agent ID, as applicable, of a counterparty on the other side. The Commission could have required the reporting side to provide UIC information for *both* sides of the transaction, but this would obligate a non-reporting side to furnish its UIC information to the reporting side so that the additional UICs could be reported by the reporting side. There are circumstances where a non-reporting side might be unable or unwilling to provide its UIC information to the reporting side. Therefore, the Commission is instead requiring the registered SDR to obtain these UICs from the non-reporting side through the Rule 906(a) process.[735] Obtaining UICs for both sides will enhance the Commission's ability to carry out its responsibility to oversee the security-based swap market, because the Commission will be able to identify individual traders and business units that are involved in security-based swap transactions.[736]

In a subsequent comment letter, in response to the re-proposal of Regulation SBSR, the same commenter expressed concern that Rule 906(a) could require a registered SDR to send reports to and obtain information from persons who might not be participants of that registered SDR.[737] More generally, this commenter suggested that registered SDRs should not police security-based swap reports for deficiencies or unpopulated data fields in any manner that requires the registered SDR to take affirmative action to obtain information.[738]

The Commission disagrees with the commenter's suggestion that registered SDRs should have no duty to review the completeness of security-based swap reports or obtain missing information from participants. To the contrary, the Commission believes that registered SDRs are best situated to review reported data for completeness because they have a statutory and regulatory duty to accept and maintain security-based swap data, as prescribed by the Commission.[739] Imposing an affirmative duty on registered SDRs to verify the completeness of reported data and to

[729] *See* 78 FR 31214.

[730] As discussed above, *see supra* Section II(C), the Commission has added ''branch ID'' and ''execution agent ID'' to the UICs required to be reported under Regulation SBSR. The Commission believes that reporting the branch ID and the execution agent ID for both counterparties to a security-based swap, if applicable, to a registered SDR will assist the Commission and other relevant authorities in overseeing the security-based swap market. Accordingly, the Commission has included branch ID and execution agent ID as UICs that registered SDRs must obtain pursuant to Rule 906(a).

[731] The Commission has determined to use the term ''counterparty ID'' rather than ''participant ID'' and to use the term ''trading desk ID'' rather than ''desk ID'' throughout Regulation SBSR. *See supra* Sections II(B)(3)(b) and II(C)(3)(c). In addition, the Commission has inserted the word ''direct'' immediately before each instance of the word ''counterparty.'' When the Commission re-proposed Rule 906(a), it made conforming changes to reflect the introduction of the ''reporting side'' concept and to clarify that relevant UICs for the non-reporting side must be reported only for direct counterparties. The word ''counterparty'' occurs in two places in final Rule 906(a), but the re-proposed rule inserted ''direct'' before ''counterparty'' only after the first occurrence. Final Rule 906(a) inserts ''direct'' before ''counterparty'' both times that the word ''counterparty'' is used. Final Rule 906(a) also includes modifications that clarify that the term ''participant,'' as used in Rule 906(a), means a participant in a registered SDR. The Commission has made similar modifications throughout final Rule 906. The Commission also is revising the final sentence of Rule 906(a) to clarify that the participant referred to in that sentence is a participant of a registered SDR, and to clarify that a participant that receives a Rule 906(a) report from a registered SDR is responsible for providing missing UIC information for its side of each security-based swap referenced in the report. The participant is not responsible for providing any missing UIC information pertaining to the other side of the transaction. Accordingly, the last sentence of Rule 906(a) states: ''A participant of a registered security-based swap data repository that receives such a report shall provide the missing information *with respect to its side of each security-based swap referenced in the report* to the registered security-based swap data repository within 24 hours.'' In addition, the Commission is revising the rule to refer to execution agents to conform to Rule 901(d)(1)(i). Finally, to more accurately reflect the requirements of the rule, the Commission is changing the title of the rule to ''Identifying missing UIC information.''

[732] *See* DTCC II at 16. This commenter also suggested that desk IDs and trader IDs should not be required to be reported due to the fact that desk structures are changed relatively frequently and traders often rotate to different desks or transfer to different firms. *See* DTCC II at 11. This suggestion is addressed above in Section II(C)(3)(c).

[733] *See* DTCC II at 16.

[734] However, if the non-reporting side for the security-based swap does not meet the definition of ''participant'' in Rule 900(u), Rule 906(a) would not require the registered SDR to request UIC information from the non-reporting side. This result is consistent with the Regulation SBSR Proposing Release. *See* 75 FR 75240 (''Thus, the Commission anticipates that there would be some SBSs reported to and captured by a registered SDR where only one counterparty of the SBS is a participant'').

[735] Rule 906(a) provides: ''A registered security-based swap data repository shall identify any security-based swap reported to it for which the registered security-based swap data repository does not have the counterparty ID and (if applicable) the broker ID, branch ID, execution agent ID, trading desk ID, and trader ID of each direct counterparty. Once a day, the registered security-based swap data repository shall send a report to each participant of the registered security-based swap data repository or, if applicable, an execution agent, identifying, for each security-based swap to which that participant is a counterparty, the security-based swap(s) for which the registered security-based swap data repository lacks counterparty ID and (if applicable) broker ID, branch ID, execution agent ID, desk ID, and trader ID. A participant of a registered security-based swap data repository that receives such a report shall provide the missing information with respect to its side of each security-based swap referenced in the report to the registered security-based swap data repository within 24 hours.'' Rule 900(u) defines ''participant,'' with respect to a registered SDR, as ''a counterparty, that meets the criteria of § 242.908(b), of a security-based swap that is reported to that registered security-based swap data repository to satisfy an obligation under § 242.901(a).''

[736] Nothing in Regulation SBSR prevents a non-reporting side from voluntarily providing all of its applicable UICs to the reporting side, so that the reporting side could, as agent, report all of the non-reporting side's UICs together with the rest of the data elements required by Rules 901(c) and 901(d). If this were to occur, the registered SDR would not need to send a Rule 906(a) report to the non-reporting side inquiring about the non-reporting side's missing UICs.

[737] *See* DTCC V at 13. As noted above, however, Rule 906(a), as adopted, requires the registered SDR to obtain UIC information only from non-reporting sides that are participants of that registered SDR.

[738] *See* DTCC V at 13.

[739] *See* 15 U.S.C. 78m(n)(5).

obtain missing data should increase the reliability of data maintained by registered SDRs while decreasing the possibility of registered SDRs providing incomplete reports to relevant authorities. This, in turn, will facilitate oversight of the security-based swap market, which is a primary objective Title VII.

Rule 906(a) requires registered SDRs to communicate with participants that are not reporting sides under Regulation SBSR. As discussed above, these communications are required to ensure that a registered SDR maintains complete UIC information for both sides of each security-based swap transaction that is reported to the registered SDR. The Commission recognizes that some non-reporting sides may not wish to connect directly to a registered SDR because they may not want to incur the costs of establishing a direct connection. Rule 906(a) does not prescribe the means registered SDRs must use to obtain information from non-reporting sides. As a result, registered SDRs have broad discretion to establish a methodology for notifying non-reporting sides of missing UIC information and obtaining UIC reports from the non-reporting side. For example, a registered SDR could send notifications and receive reports via email, in accordance with its policies and procedures.[740] Registered SDRs should consider allowing non-reporting sides to provide the information required by Rule 906(a) in a minimally-burdensome manner.

Historical security-based swaps must be reported to a registered SDR pursuant to Rule 901(i). The Commission acknowledges that broker IDs, branch IDs, execution agent IDs, trading desk IDs, and trader IDs do not yet exist and will not exist until assigned by registered SDRs. Therefore, these UICs are not data elements applicable to historical security-based swaps. Accordingly, registered SDRs are not required under Rule 906(a) to identify these UICs as missing or to communicate to non-reporting side participants that they are missing, and non-reporting side participants are not required by Rule 906(a) to provide these UICs to a registered SDR with respect to any historical security-based swaps.

B. Duty To Provide Ultimate Parent and Affiliate Information to Registered SDRs—Rule 906(b)

To assist the Commission and other relevant authorities in monitoring systemic risk, a registered SDR should be able to identify and calculate the security-based swap exposures of its participants on an enterprise-wide basis.[741] Therefore, the Commission proposed Rule 906(b), which would have required each participant of a registered SDR to provide to the registered SDR information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered SDR. Proposed Rule 906(b) would have required a person to provide parent and affiliate information to a registered SDR immediately upon becoming a participant.[742] Proposed Rule 906(b) also would have required a participant to promptly notify the registered SDR of any changes to reported parent or affiliate information.

The Commission also proposed rules to define the relationships that could give rise to reporting obligations under Rule 906(b). Proposed Rule 900 would have defined an ''affiliate'' as ''any person that, directly or indirectly, controls, is controlled by, or is under common control with, a person'' and ''control'' as ''the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.'' [743] The Commission also proposed definitions of ''parent'' and ''ultimate parent'' to identify particular categories of affiliated entities based on a person's ability to control an affiliate. Specifically, proposed Rule 900 would have defined ''parent'' to mean ''a legal person that controls a participant'' and ''ultimate parent'' as ''a legal person that controls a participant and that itself has no parent.'' The Commission also proposed to define ''ultimate parent ID'' as ''the UIC assigned to an ultimate parent of a participant.''

The Commission re-proposed the definitions of ''affiliate,'' ''control,'' ''parent,'' ''ultimate parent,'' and ''ultimate parent ID,'' and Rule 906(b) without change in the Cross-Border Proposing Release.[744]

After considering the comments received, which are discussed below, the Commission is adopting Rule 906(b), as proposed and re-proposed, subject to two clarifying changes.[745] Obtaining ultimate parent and affiliate information will assist the Commission in monitoring enterprise-wide risks related to security-based swaps. If participants are not required to identify which of their affiliates also are participants of a particular registered SDR, the Commission or other relevant authorities might be unable to calculate the security-based swap exposures of that ownership group using data held in the registered SDR. As a result, systemic risk might build undetected within an ownership group, even if all security-based swaps for that enterprise were reported to the same registered SDR. The lack of transparency regarding OTC derivatives exposures within the same ownership group was one of the factors that hampered regulators' ability to respond to the financial crisis of 2007–08.[746]

The Commission believes that a reasonable means of monitoring security-based swap positions on a group-wide basis is by requiring each participant of a registered SDR to provide information sufficient to identify the participant's ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered SDR, using ultimate parent IDs and counterparty IDs.[747] Rule

[740] *See supra* Section IV (discussing Rule 907(a)(2)).

[741] The Commission notes that Rule 13n–5(b)(2) under the Exchange Act provides: ''Every security-based swap data repository shall establish, maintain, and enforce written policies and procedures reasonably designed to calculate positions for all persons with open security-based swaps for which the security-based swap data repository maintains records.''

[742] The policies and procedures of a registered SDR will establish on-boarding procedures for participants.

[743] Proposed Rule 900 further would have provided that a person would be presumed to control another person if the person: ''(1) [i]s a director, general partner or officer exercising executive responsibility (or having similar status or functions); (2) [d]irectly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities; or (3) [i]n the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25 percent or more of the capital.''

[744] *See* 78 FR 31210–11. The definition of ''affiliate'' was re-proposed as Rule 900(a). The definitions of ''control,'' ''parent,'' and ''ultimate parent'' were re-proposed as Rules 900(f), 900(r), and 900(*ll*), respectively. Re-proposed Rule 900(mm) contained the definition of ''ultimate parent ID.''

[745] Specifically, the Commission is modifying Rule 906(b) to clarify that the term ''participant,'' means a participant in a registered SDR. The Commission also is replacing the term ''participant ID'' with ''counterparty ID.''

[746] *See* Financial Crisis Inquiry Commission, ''The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States,'' January 2011, at xxi, available at: *http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf*, last visited September 22, 2014 (explaining that relevant authorities ''lacked a full understanding of the risks and interconnections in the financial markets'' prior to and during the financial crisis, including, among other things, the exposures created by Lehman Brothers' derivatives contracts).

[747] Among other things, Rule 906(b) should enable the Commission and other relevant authorities to identify quickly security-based swaps of a corporate group that have been reported to the registered SDR, including security-based swaps

Continued

906(b), as adopted, imposes an affirmative obligation on participants of a registered SDR to provide this ownership and affiliation information to a registered SDR immediately upon becoming a participant of that SDR. The participant also must notify the registered SDR promptly of any changes to that information. To minimize burdens on participants and to align the burdens as closely as possible with the purpose behind the requirement, Rule 906(b) does not require a participant of a registered SDR to provide information to the registered SDR about *all* of its affiliates, but only those that are also participants of the same registered SDR.

The Commission received three comments addressing proposed Rule 906(b).[748] One commenter supported the proposed rule, stating that parent and affiliate information, along with other information required to be reported by Regulation SBSR, is critical to providing regulators with a comprehensive view of the swaps market and assuring that publicly reported data is accurate and meaningful.[749] This commenter further stated that registered SDRs should have the power to obtain parent and affiliate information from firms, because this information would help to illustrate the full group level exposures of firms and the impact of the failure of any participant.[750] The Commission generally agrees with the commenter's points and continues to believe that identifying security-based swap exposures within an ownership group is critical to monitoring market activity and detecting potential systemic risks. The existence of data vendors that provide parent and affiliate information may reduce any burdens on participants associated with reporting such information to a registered SDR,[751] but the Commission does not view this as an adequate substitute for having the information reported to and readily available from registered SDRs. Title VII's regulatory reporting requirement is designed to allow the Commission and other relevant authorities to have access to comprehensive information about security-based swap activity in registered SDRs. The Commission believes that it would be inimical to that end for relevant authorities to have all the transaction information in registered SDRs but be forced to rely on information from outside of registered SDRs to link positions held by affiliates within the same corporate group.

Two commenters suggested clarifications or modifications to the proposed rule.[752] One commenter expressed concerns about how Rule 906(b) would apply to agents, noting that investment advisers frequently execute a single security-based swap transaction on behalf of multiple accounts and allocate the notional amount of the transaction among these accounts at the end of the day.[753] The commenter stated that advisers often do not know all of the affiliates of their clients and, as a result, might be unable to comply with Rule 906(b).[754] The commenter recommended that ''the Commission clarify that an adviser that has implemented reasonable policies and procedures to obtain the required information about affiliates and documented its efforts to obtain the information from its clients be deemed to have satisfied [Rule 906(b) of] Regulation SBSR.'' [755]

The Commission believes that it is unnecessary to modify Rule 906(b) in response to this comment. The Commission notes that Rule 906(b) imposes no obligations on an execution agent, such as an investment adviser that executes a single security-based swap on behalf of multiple accounts and allocates the notional amount of the transaction among those accounts at the end of the day. Rather, it would be the counterparty itself that would have the responsibility under Rule 906(b).

Another commenter expressed the view that the information required to be reported by Rule 906(b) should be placed in prescribed XBRL templates or other such input mechanisms that would capture this information at its source for all downstream processes in the financial supply chain to use.[756] The Commission has determined not to specify the manner or format in which security-based swap counterparties must provide ultimate parent and affiliate information to a registered SDR. The Commission believes that it would be preferable to allow each registered SDR to determine a suitable way to receive and maintain ultimate parent and affiliate information about its participants. The Commission notes that Rule 907(a)(6), as adopted, requires a registered SDR to establish and maintain written policies and procedures for periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any other participant(s) with which the counterparty is affiliated, using ultimate parent IDs and counterparty IDs.[757]

The Commission received three comments on the definitions of ''control'' and ''affiliate.'' [758] No commenters specifically addressed the definitions of ''parent,'' ''ultimate parent,'' or ''ultimate parent ID.'' After carefully evaluating these comments, the Commission is adopting the definitions of ''affiliate,'' ''control,'' ''parent,'' ''ultimate parent,'' and ''ultimate parent ID'' as proposed and re-proposed.[759]

One commenter stated its view that the proposed definition of ''control'' was improper.[760] This commenter believed that the proposed 25% threshold for presuming control was too low, and that obtaining the information required by Rule 906(b) from entities with which a security-based swap market participant has less than a majority ownership relationship would be overly burdensome, and, in some cases, not practicable.[761] The commenter recommended that the Commission amend the definition to presume control based on no less than majority ownership.[762]

The Commission disagrees that, for purposes of Regulation SBSR, control should be presumed to exist only if there is majority ownership. Rule 906(b) is designed to assist the Commission and other relevant authorities in monitoring group-wide security-based swap exposures by enabling a registered SDR to provide them with the information necessary to calculate positions in security-based swaps held within the same ownership group that are reported to that registered SDR. If the Commission were to adopt definitions of ''control'' and ''affiliate'' that were based on majority ownership,

held by securitization vehicles that are controlled by financial institutions.

[748] *See* DTCC II at 13–14; ICI I at 6; GS1 Proposal at 43–44.

[749] *See* DTCC II at 13–14.

[750] *See id.* at 17. This commenter believed that a registered SDR likely would obtain parent and affiliate information from a data vendor and allow participants to review and approve the data.

[751] *See id.*

[752] *See* ICI I at 6; GS1 Proposal at 43–44.

[753] *See* ICI I at 6, note 9.

[754] *See id.*

[755] *Id.*

[756] *See* GS1 Proposal at 43.

[757] As originally proposed, Rule 907(a)(6) would have required a registered SDR to establish and maintain written policies and procedures ''[f]or periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any other participant(s) with which the *counterparty* is affiliated, using ultimate parent IDs and participant IDs'' (emphasis added). The Commission re-proposed Rule 907(a)(6) with the word ''participant'' in place of the word ''counterparty.''

[758] *See* DTCC II at 17; Multiple Associations Letter at 7–8; SIFMA I at 6.

[759] Final Rule 900(a) defines ''affiliate,'' while the definitions of ''control,'' ''parent,'' ''ultimate parent'' and ''ultimate parent ID'' are in Rules 900(h), 900(t), 900(oo), and 900(pp), respectively.

[760] *See* SIFMA I at 6.

[761] *See id.*

[762] *See id.*

participants would be required to identify fewer entities as affiliates, even if certain indicia of affiliation were present. The Commission believes that, to carry out its oversight function for the security-based swap market, it should err on the side of inclusion rather than exclusion when considering which positions are part of the same ownership group for general oversight purposes.

The Commission also notes that the definition of ''control'' as adopted in Rule 900(h) is consistent with the definition used in other Commission rules and forms,[763] so market participants should be accustomed to applying this definition in the conduct of their business activities. Furthermore, the CFTC's swap data reporting rules employ a materially similar definition of ''control'' for purposes of determining whether two market participants are affiliated with each other.[764] If the Commission were to adopt a different definition of ''control,'' market participants would need to determine their affiliates under both sets of rules, thereby imposing what the Commission believes would be unnecessary costs on market participants.

One commenter suggested that the Commission and the CFTC use a consistent definition of ''affiliate'' throughout the Title VII rulemakings [765] and recommended that the Commission and CFTC use the definition of ''affiliated group'' in the Commissions' proposed joint rulemaking to further define the terms swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, and eligible contract participant (''Entity Definitions Proposing Release'').[766] The Commission does not believe it is appropriate to adopt, for purposes of Regulation SBSR, the definition of ''affiliated group'' that was proposed in the Entity Definitions Proposing Release. The final rules defining ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' ''major security-based swap participant,'' and ''eligible contract participant'' (''Final Entity Definition Rules'') did not adopt a definition of ''affiliated group.'' [767] When the Commission and CFTC adopted the Final Entity Definition Rules they specifically rejected the notion that an ''affiliated group'' should include only those entities that report information or prepare financial statements on a consolidated basis as a prerequisite for being affiliated because they did not believe that whether or not two entities are affiliated should change according to changes in accounting standards.[768] The Commission continues to believe that changes in accounting standards should not determine whether two entities are affiliated and therefore declines to adopt the definition of ''affiliated group'' that it proposed in the Entity Definitions Proposing Release.

C. Policies and Procedures of Registered Security-Based Swap Dealers and Registered Major Security-Based Swap Participants To Support Reporting—Rule 906(c)

For the security-based swap reporting requirements established by the Dodd-Frank Act to achieve the objectives of enhancing price transparency and providing regulators with access to data to help carry out their oversight responsibilities, the information that participants provide to registered SDRs must be reliable. Ultimately, the majority of security-based swaps likely will be reported by registered security-based swap dealers and registered major security-based swap participants. The Commission believes that requiring these participants to adopt policies and procedures to address their security-based swap reporting obligations will increase the accuracy and reliability of the transaction reports that they submit to registered SDRs.

Proposed Rule 906(c) would have required a participant that is a security-based swap dealer or major security-based swap participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that the participant complies with any obligations to report information to a registered SDR in a manner consistent with Regulation SBSR and the policies and procedures of any registered SDR of which it is a participant. The policies and procedures contemplated by proposed Rule 906(c) were intended to promote complete and accurate reporting of security-based swap information by participants that are security-based swap dealers and major security-based swap participants, consistent with their obligations under the Dodd-Frank Act and Regulation SBSR. Proposed Rule 906(c) also would have required a security-based swap dealer or major security-based swap participant to review and update its policies and procedures at least annually. The Commission re-proposed Rule 906(c) without change as part of the Cross-Border Proposing Release.[769] The one commenter who addressed this aspect of Regulation SBSR stated that proposed Rule 906(c) is ''a necessary part of risk governance and compliance.'' [770]

The Commission agrees and is adopting Rule 906(c), largely as proposed and re-proposed, subject to two modifications.[771] As proposed and re-proposed, Rule 906(c) would have required security-based swap dealers and major security-based swap participants to establish, maintain, and enforce written policies and procedures to support security-based swap transaction reporting. As discussed above, Rule 906(c), as adopted, imposes this duty only on *registered* security-based swap dealers and *registered* major security-based swap participants.[772] Second, Rule 906(c), as adopted, does not include the phrase ''and the policies and procedures of any registered security-based swap data repository of which it is a participant.'' The Commission believes that it is sufficient to require that the policies and procedures of registered security-based swap dealers and registered major security-based swap participants be reasonably designed to ensure compliance with the reporting

[763] *See, e.g.,* Rule 300(f) of Regulation ATS under the Exchange Act, 17 CFR 242.300(f); Rule 19g2–1(b)(2) under the Exchange Act, 17 CFR 240.19g2–1(b)(2); Form 1 (Application for, and Amendments to Application for, Registration as a National Securities Exchange or Exemption from Registration Pursuant to Section 5 of the Exchange Act); Form BD (Uniform Application for Broker-Dealer Registration). *See also* Rule 3a55–4(b)(2) under the Exchange Act, 17 CFR 240.3a55–4(b)(2) (defining control to mean ownership of 20% or more of an issuer's equity, or the ability to direct the voting of 20% or more of the issuer's voting equity).

[764] *See* 17 CFR 45.6(a) (defining ''control'' in the context of the CFTC's LEI system); 17 CFR 45.6(e)(2).

[765] *See* Multiple Associations Letter at 7–8.

[766] Securities Exchange Act Release No. 63452 (December 7, 2010), 75 FR 80174 (December 21, 2010). In the Entity Definitions Proposing Release, ''affiliated group'' would have been used to describe the range of counterparties that a security-based swap market participant would need to count for purposes of determining whether it qualified for a *de minimis* exception from the definition of ''security-based swap dealer.'' For purposes of the Entity Definitions Proposing Release, the Commissions stated that an affiliated group would be defined as ''any group of entities that is under common control and that reports information or prepares its financial statements on a consolidated basis.'' *See* 75 FR 80180, note 43.

[767] Securities Exchange Act Release No. 66868 (April 27, 2012), 77 FR 30596 (May 23, 2012).

[768] *See id.* at 30625.

[769] *See* 78 FR 31214.

[770] Barnard I at 3.

[771] The Commission also revised Rule 906(c), to clarify that the term ''participant'' means a participant of a registered SDR.

[772] *See supra* Section V(B)(1) (explaining that, during the period before the Commission has adopted rules for the registration of security-based swap dealers and major security-based swap participants, the Commission seeks to avoid imposing costs on market participants who otherwise would have to assess whether they are security-based swap dealers or major security-based swap participants).

obligations under Regulation SBSR.[773] Additionally, the Commission anticipates that SDRs will enter into contractual arrangements with reporting sides for the reporting of transactions required to be reported under Regulation SBSR, and that such arrangements likely will stipulate the various rights and obligations of the parties when reporting security-based swap transactions.

Rule 906(c) is designed to promote greater accuracy and completeness of reported security-based swap transaction data by requiring the participants that will bear substantial reporting obligations under Regulation SBSR to adopt policies and procedures that are reasonably designed to ensure that their reports are accurate and reliable. If these participants do not have written policies and procedures for carrying out their reporting duties, compliance with Regulation SBSR might depend too heavily on key individuals or *ad hoc* and unreliable processes. The Commission, therefore, believes that registered security-based swap dealers and registered major security-based swap participants should be required to establish written policies and procedures which, because they are written and can be shared throughout the organization, should be independent of any specific individuals. Requiring such participants to adopt and maintain written policies and procedures relevant to their reporting responsibilities, as required under Rule 906(c), should help to improve the degree and quality of overall compliance with the reporting requirements of Regulation SBSR. Periodic review of the policies and procedures, as required by Rule 906(c), should help ensure that these policies and procedures remain well functioning over time.

The value of requiring policies and procedures in promoting regulatory compliance is well-established. Internal control systems have long been used to strengthen the integrity of financial reporting. For example, Congress recognized the importance of internal control systems in the Foreign Corrupt Practices Act, which requires public companies to maintain a system of internal accounting controls.[774] Broker-dealers also must maintain policies and procedures for various purposes.[775] The Commission believes that requiring each registered security-based swap dealer and registered major security-based swap participant to adopt and maintain written policies and procedures designed to promote compliance with Regulation SBSR is consistent with Congress's goals in adopting the Dodd-Frank Act.

The policies and procedures required by Rule 906(c) could address, among other things: (1) The reporting process and designation of responsibility for reporting security-based swap transactions; (2) the process for systematizing orally negotiated security-based swap transactions; (3) order management system outages or malfunctions, and when and how back-up systems are to be used in connection with required reporting; (4) verification and validation of all information relating to security-based swap transactions reported to a registered SDR; (5) a training program for employees responsible for security-based swap transaction reporting; (6) control procedures relating to security-based swap transaction reporting and designation of personnel responsible for testing and verifying such policies and procedures; and (7) reviewing and assessing the performance and operational capability of any third party that carries out any duty required by Regulation SBSR on behalf of the registered security-based swap dealer or registered major security-based swap participant.[776]

XIV. Other Aspects of Policies and Procedures of Registered SDRs

A. Public Availability of Policies and Procedures

Rule 907(c), as proposed and re-proposed, would have required a registered SDR to make its policies and procedures publicly available on its Web site. The Commission did not receive any comments on Rule 907(c) and is adopting it as proposed and re-proposed. This public availability requirement will allow all interested parties to understand how the registered SDR is utilizing the flexibility it has in operating the transaction reporting and dissemination system. Being able to review the current policies and procedures will provide an opportunity for participants to make suggestions to the registered SDR for altering and improving those policies and procedures, in light of new products or circumstances, consistent with the principles set out in Regulation SBSR.

B. Updating of Policies and Procedures

Proposed Rule 907(d) would have required a registered SDR to ''review, and update as necessary, the policies and procedures required by [Regulation SBSR] at least annually.'' Proposed Rule 907(d) also would have required the registered SDR to indicate the date on which its policies and procedures were last reviewed. The Cross-Border Proposing Release re-proposed Rule 907(d) without revision.

The Commission did not receive any comments on Rule 907(d) and is adopting it as proposed and re-proposed. The Commission continues to believe that a registered SDR should periodically review its policies and procedures to ensure that they remain well-functioning over time. The Commission also continues to believe that requiring registered SDRs to indicate the date on which their policies and procedures were last reviewed will allow regulators and SDR participants to understand which version of the policies and procedures are current. A registered SDR could satisfy this obligation by, for example, noting when individual sections were last updated or by reissuing the entirety of the policies and procedures with an ''as of'' date. The Commission notes that, regardless of the method chosen and although only the most current version of a registered SDR's policies and procedures must be publicly available pursuant to Rule 907, the registered SDR must retain prior versions of those policies and procedures for regulatory purposes pursuant to Rule 13n–7(b) under the Exchange Act,[777] as adopted by the Commission.[778] These records would help the Commission, if conducting a review of a registered SDR's past actions, to understand what policies and procedures were in force at the time.

C. Provision of Certain Reports to the Commission

Under Title VII, the Commission is responsible for regulating and overseeing the security-based swap market, including the trade reporting obligations imposed by Regulation

[773] The Commission notes that a reporting side is also required to electronically transmit information required under Regulation SBSR to a registered SDR in a format required by that SDR. *See* Rule 901(h); note 268, *supra,* and accompanying text.

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

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

[776] *See* 75 FR 75234.

[777] 17 CFR 240.13n–7(b)(1) (''Every security-based swap data repository shall keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Act and the rules and regulations thereunder'').

[778] *See* SDR Adopting Release.

SBSR.[779] The Commission believes that, to carry out this responsibility, it will be necessary to obtain from each registered SDR information related to the timeliness, accuracy, and completeness of data reported to the registered SDR by the SDR's participants. Required data submissions that are untimely,[780] inaccurate,[781] or incomplete[782] could compromise the regulatory data that the Commission would utilize to carry out its oversight responsibilities. Furthermore, required data submissions that are untimely, inaccurate, or incomplete could diminish the value of publicly disseminated reports that are meant to promote transparency and price discovery.

Accordingly, the Commission proposed and re-proposed Rule 907(e), which would have required a registered SDR to ''have the capacity to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it'' pursuant to Regulation SBSR and the registered SDR's policies and procedures. The sole commenter on this provision agreed that an SDR should be able to ''readily provide the Commission with any relevant information,'' but noted that an SDR might not be in the best position to confirm the accuracy of the trade information it receives.[783] The commenter believed that ultimate responsibility for the submission of accurate and complete information belongs with the reporting side, and that Rule 907(e) should be revised to reflect that an SDR's information will ''only be as timely, accurate, and complete as provided to it by parties to the trade.''[784]

The Commission is adopting Rule 907(e) with a minor revision. The final rule provides that a registered SDR ''shall provide, upon request, information or reports . . .'' rather than, as proposed and re-proposed, that a registered SDR ''shall have the capacity to provide . . .'' This language better conveys the Commission's expectation that, not only must a registered SDR have the capacity to provide the relevant information or reports, it must in fact provide such information or reports when the Commission requests. The Commission believes that this revision accords with the commenter who stated that an SDR should be able to ''readily provide the Commission with any relevant information.''[785]

However, the Commission is not revising Rule 907(e) to reflect that an SDR's information will ''only be as timely, accurate, and complete as provided to it by parties to the trade,'' as requested by the commenter.[786] The Commission appreciates that there could be certain data elements submitted by reporting sides that a registered SDR could not reasonably be expected to know are inaccurate. For example, if the reporting side submits a valid trader ID for trader X when in fact the transaction was carried out by trader Y, the Commission would not expect a Rule 907(e) report provided by a registered SDR to reflect this fact. The Commission notes, however, that Rule 13n–5(b)(1)(iii) under the Exchange Act requires an SDR to ''establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the security-based swap data repository is complete and accurate.'' Thus, the Commission could require a registered SDR to include in a Rule 907(e) report any instances where a reporting side reported a trader ID that fails the SDR's validation rules, because the SDR is in a position to know which trader IDs (and other UICs) are consistent with UICs assigned to traders of its participants.[787]

XV. Rule 908—Cross-Border Reach of Regulation SBSR

Security-based swap business currently takes place across national borders, with agreements negotiated and executed between counterparties in different jurisdictions (which might then be booked and risk-managed in still other jurisdictions).[788] Given the global nature of the market and to help ensure an effective regime for regulatory reporting and public dissemination of security-based swap transactions under Title VII, it is important that Regulation SBSR identify which transactions in this global market will be subject to these Title VII requirements. Regulation SBSR, as initially proposed in November 2010, included Rule 908, which sought to address the cross-border application of the regulatory reporting and public dissemination requirements. In the Cross-Border Proposing Release, issued in May 2013, the Commission re-proposed Rule 908 with substantial revisions. Commenters' views on re-proposed Rule 908 and the final rule, as adopted by the Commission, are discussed in detail below, following a discussion of the Commission's approach to cross-border application of its authority under Title VII and the Exchange Act generally.

A. General Considerations

As stated in the Cross-Border Adopting Release, the Commission continues to believe that a territorial approach to the application of Title VII—including the requirements relating to regulatory reporting and public dissemination of security-based swap transactions—is appropriate.[789] This approach, properly understood, is grounded in the text of the relevant statutory provisions and is designed to help ensure that the Commission's application of the relevant provisions is consistent with the goals that the statute was intended to achieve.[790] Once the Commission has identified the activity regulated by the statutory provision, it then determines whether a person is engaged in conduct that the statutory provision regulates and whether this conduct occurs within the United States.[791]

[779] Under Title VII, registered SDRs are not self-regulatory organizations and thus lack the enforcement authority that self-regulatory organizations have over their members under the Exchange Act. Any information or reports requested by the Commission under Rule 907(e) would assist the Commission in examining for and enforcing compliance with Regulation SBSR by reporting parties.

[780] For example, a registered SDR would be able to determine that a reporting side had reported late if the date and time of submission were more than 24 hours after the date and time of execution reported by the reporting side (or, if 24 hours after the time of execution would have fallen on a day that was not a business day, then after that same time on the next business day). *See* Rule 901(j).

[781] Some examples of clearly inaccurate data would include using lettered text in a field that clearly requires a number (or vice versa), or using a UIC that corresponds to no valid LEI or to a UIC issued or endorsed by the registered SDR.

[782] An example of an incomplete report would be leaving one or more required reporting fields blank.

[783] DTCC V at 14.

[784] *Id.*

[785] *See* note 783, *supra.*

[786] *Id.*

[787] *See also* Section 13(n)(5)(B) of the Exchange Act, 15 U.S.C. 78m(n)(5)(B) (requiring an SDR to ''confirm with both counterparties to the security-based swap the accuracy of the data that was submitted''); Rule 13n–4(b)(3) under the Exchange Act (implementing that requirement).

[788] Security-based swap market data indicates that many security-based swap transactions involve activity in more than one jurisdiction. *See infra* Section XXII(B)(1)(b) (noting that data in the Trade Information Warehouse reveals that approximately 13% of price-forming transactions in North American single-name CDS transaction from January 2008 to December 2013 were between two U.S.-domiciled counterparties; 48% of such transactions were cross-border transactions between a U.S.-domiciled counterparty and a foreign-domiciled counterparty; and an additional 39% were between two foreign-domiciled counterparties).

[789] *See* 79 FR 47287.

[790] *See Morrison* v. *Nat'l Australia Bank, Ltd.,* 130 S. Ct. 2869, 2884 (2010) (identifying focus of statutory language to determine what conduct was relevant in determining whether the statute was being applied to domestic conduct).

[791] When the statutory text does not describe the relevant activity with specificity or provides for

Continued

Under the foregoing analysis, when a U.S. person enters into a security-based swap, the security-based swap necessarily exists at least in part within the United States. The definition of ''U.S. person''—adopted in the Cross-Border Adopting Release and incorporated by reference into Regulation SBSR—is intended, in part, to identify those persons for whom it is reasonable to infer that a significant portion of their financial and legal relationships is likely to exist within the United States, and that it is therefore reasonable to conclude that risk arising from their security-based swap activities could manifest itself within the United States, regardless of the location of their counterparties, given the ongoing nature of the obligations that result from security-based swap transactions.[792] Under its territorial approach, the Commission seeks to apply Title VII's regulatory reporting and public dissemination requirements in a consistent manner to differing organizational structures that serve similar economic purposes, and thereby avoid creating different regulatory outcomes for differing legal arrangements that raise similar policy considerations and pose similar economic risks to the United States.[793] Therefore, as discussed in the Cross-Border Adopting Release, this territorial application of Title VII requirements extends to the activities of U.S. person conducted through a foreign branch or office [794] and to the activities of a non-U.S. person for which the U.S. person provides a recourse guarantee.[795]

The Commission further notes that Section 15F(f)(1)(A) of the Exchange Act [796] provides that each registered security-based swap dealer and major security-based swap participant ''shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the registered security-based swap dealer or major security-based swap participant.'' [797]

Finally, the Commission seeks to minimize the potential for duplicative or conflicting regulations. The Commission recognizes the potential for market participants who engage in cross-border security-based swap activity to be subject to regulation under Regulation SBSR and parallel rules in foreign jurisdictions in which they operate. To address this possibility, the Commission—as described in detail below—is adopting a ''substituted compliance'' framework. The Commission may issue a substituted compliance determination if it finds that the corresponding requirements of the foreign regulatory system are comparable to the relevant provisions of Regulation SBSR, and are accompanied by an effective supervisory and enforcement program administered by the relevant foreign authorities.[798] The availability of substituted compliance is designed to reduce the likelihood of cross-border market participants being subject to potentially conflicting or duplicative reporting requirements.

B. Definition of ''U.S. Person''

In the Regulation SBSR Proposing Release, the Commission proposed to define ''U.S. person'' as ''a natural person that is a U.S. citizen or U.S. resident or a legal person that is organized under the corporate laws of any part of the United States or has its principal place of business in the United States.'' [799] In the Cross-Border Proposing Release, the Commission introduced a new definition of ''U.S. person'' that it proposed to use in all Title VII rulemakings to promote consistency and transparency, which differed from the initially proposed definition in certain respects. Re-proposed Rule 900(pp) would have defined ''U.S. person'' by cross-referencing proposed Rule 3a71–3(a)(7), which would have defined ''U.S. person'' as:

(i) Any natural person resident in the United States;

(ii) any partnership, corporation, trust, or other legal person organized or incorporated under the laws of the United States or having its principal place of business in the United States; and

(iii) any account (whether discretionary or non-discretionary) of a U.S. person.[800]

The Commission received extensive comment on this proposed definition of ''U.S. person'' and responded to those comments in the Cross-Border Adopting Release.[801]

The Commission adopted a definition of ''U.S. person'' in the Cross-Border Adopting Release as Rule 3a71–3(a)(4) under the Exchange Act, which reflects a territorial approach to the application of Title VII.[802] The Commission believes that using the same definition of ''U.S. person'' in multiple Title VII rules could benefit market participants by eliminating complexity that might result from the use of different definitions for different Title VII rules. Accordingly, final Rule 900(ss) of Regulation SBSR defines ''U.S. person'' to have the same meaning as in Rule 3a71–3(a)(4). Rule 3a71–3(a)(4)(i) defines ''U.S. person'' as: (1) A natural person resident in the United States; [803] (2) a partnership, corporation, trust, investment vehicle, or other legal person organized, incorporated, or established under the laws of the United States or having its principal place of business [804] in the

further Commission interpretation of statutory terms or requirements, this analysis may require the Commission to identify through interpretation of the statutory text the specific activity that is relevant under the statute or to incorporate prior interpretations of the relevant statutory text. *See* Cross-Border Adopting Release, 79 FR 47287 (explaining the Commission's approach to interpreting Title VII requirements).

[792] *See* 79 FR 47288–89. As discussed below, the Commission is adopting a definition of ''U.S. person'' in Regulation SBSR that cross-references the definition adopted as part of the Cross-Border Adopting Release.

[793] *See id.* at 47344.

[794] *See id.* at 47289.

[795] *See id.* at 47289–90.

[796] 15 U.S.C. 78o–10(f)(1)(A).

[797] In addition, Section 30(c) of the Exchange Act, 15 U.S.C. 78dd(c), authorizes the Commission to apply Title VII to persons transacting a business ''without the jurisdiction of the United States'' if they contravene rules that the Commission has prescribed as ''necessary or appropriate to prevent the evasion of any provision'' of Title VII. As the Commission stated in the Cross-Border Adopting Release, Section 30(c) does not require a finding that actual evasion has occurred or is occurring to invoke the Commission's authority to reach activity ''without the jurisdiction of the United States'' or to limit application of Title VII to security-based swap activity ''without the jurisdiction of the United States'' only to business that is transacted in a way that is purposefully intended to evade Title VII. *See* 79 FR 47291. The focus of this provision is not whether such rules impose Title VII requirements only on entities engaged in activity that is consciously evasive, but whether the rules are generally ''necessary or appropriate'' to prevent potential evasion of Title VII. The Commission therefore disagrees with the commenter who stated that the Commission ''should not adopt an extraterritorial regulatory framework premised on the assumption that activities conducted outside the U.S. will be undertaken abroad for the purpose of evasion.'' Cleary III at 5.

[798] *See Rule* 908(c). *See also infra* Section XV(E).

[799] Rule 900 as initially proposed. *See also* Regulation SBSR Proposing Release, 75 FR 75284.

[800] *See* Cross-Border Proposing Release, 78 FR 31207.

[801] *See* 79 FR 47303–13. These comments focused on the proposed definition generally and did not address the application of the definition to Regulation SBSR.

[802] *See* Cross-Border Adopting Release, 79 FR 47308, note 255.

[803] Rule 3a71–3(a)(5) under the Exchange Act, 17 CFR 240.3a71–3(a)(4), defines ''United States'' as the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

[804] Rule 3a71–3(a)(4)(ii) under the Exchange Act, 17 CFR 240.3a71–3(a)(4)(ii), defines ''principal place of business'' as the location from which the officers, partners, or managers of the legal person primarily direct, control, and coordinate the activities of the legal person. With respect to an externally managed investment vehicle, this location is the office from which the manager of the vehicle primarily directs, controls, and coordinates the investment activities of the vehicle. *See also* Cross-Border Adopting Release, 79 FR 47308

United States; (3) an account (whether discretionary or non-discretionary) of a U.S. person; or (4) any estate of a decedent who was a resident of the United States at the time of death. As discussed in the Cross-Border Adopting Release, the Commission believes that a definition of ''U.S. person'' that focused solely on whether a legal person is organized, incorporated, or established in the United States could encourage some entities to move their place of incorporation to a non-U.S. jurisdiction to avoid complying with Title VII, while maintaining their principal place of business in the United States.[805]

By incorporating Rule 3a71–3(a)(4) by reference, Regulation SBSR also incorporates subparagraph (iv) of Rule 3a71–3(a)(4), which allows a person to rely on a counterparty's representation that the counterparty is not a U.S. person, unless such person knows or has reason to know that the representation is inaccurate. As explained in the Cross-Border Adopting Release,[806] Rule 3a71–3(a)(4)(iv) reflects a constructive knowledge standard for reliance. Under this standard, a counterparty is permitted to rely on a representation, unless such person knows or has reason to know that it is inaccurate. A person would have reason to know the representation is not accurate if a reasonable person should know, under all of the facts of which the person is aware, that it is not accurate.[807] Expressly permitting market participants to rely on such representations in the ''U.S. person'' definition should help facilitate the determination of which side to a security-based swap is the reporting side and mitigate challenges that could arise in determining a counterparty's U.S.-person status under the final rule.[808] It permits the party best positioned to make this determination to perform an analysis of its own U.S.-person status and convey, in the form of a representation, the results of that analysis to its counterparty. Such representations should help reduce the potential for inconsistent classification and treatment of a person by its counterparties and promote uniform application of Title VII.[809]

Rule 3a71–3(a)(4)(iii)—and thus Regulation SBSR—provides that the term ''U.S. person'' does not include the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations; their agencies and pension plans; and any other similar international organizations and their agencies and pension plans. Therefore, a security-based swap involving any such institution, for that fact alone, will not be subject to regulatory reporting or public dissemination under Regulation SBSR.[810] However, as discussed in Section XVI(A), *infra,* a security-based swap transaction involving such an institution could be subject to regulatory reporting and/or public dissemination, depending on the domicile and registration status of the other side of the transaction.

Finally, similar to the approach taken by the Commission in the Cross-Border Adopting Release for purposes of the *de minimis* calculation,[811] a change in a counterparty's U.S.-person status after a security-based swap is executed would not affect the original transaction's treatment under Regulation SBSR. However, if that person were to enter into another security-based swap following its change in status, any duties required by Regulation SBSR would be determined according to the new status of that person at the time of the second security-based swap.

C. Scope of Security-Based Swap Transactions Covered by Requirements of Regulation SBSR—Rule 908(a)

1. Transactions Involving a Direct Counterparty That Is a U.S. Person

Under both the proposal and re-proposal, any security-based swap that had a direct counterparty that is a U.S. person would have been subject to both regulatory reporting and public dissemination, regardless of the registration status or domicile of any counterparty on the other side of the transaction. Commenters generally did not object to this aspect of the proposal and the re-proposal.[812]

Final Rule 908(a)(1)(i) provides, in relevant part, that a security-based swap shall be subject to regulatory reporting and public dissemination if ''[t]here is a direct . . . counterparty that is a U.S. person on either or both sides of the transaction.'' Thus, any security-based swap that has a direct counterparty that is a U.S. person is subject to both regulatory reporting and public dissemination, regardless of the registration status or domicile of any counterparty on the other side of the transaction. This determination is consistent with the territorial application of Title VII described above, because any security-based swap that has a U.S.-person direct counterparty exists at least in part within the United States. One purpose of the rule is to allow the Commission and other relevant authorities to access, for regulatory and supervisory purposes, a record of each such transaction. A second purpose of the rule is to carry out the Title VII mandate for public dissemination of security-based swap transactions. The transparency benefits of requiring public dissemination of security-based swaps involving at least one U.S.-person direct counterparty would inure to other U.S. persons and the U.S. market generally, as other participants in the U.S. market are likely to transact in the same or related instruments.

(discussing the Commission's rationale for adopting the ''principal place of business'' test).

[805] *See id.,* 79 FR 47309, note 262 (''The final definition of 'principal place of business' will help ensure that entities do not restructure their business by incorporating under foreign law while continuing to direct, control, and coordinate the operations of the entity from within the United States, which would enable them to maintain a significant portion of their financial and legal relationships within the United States while avoiding application of Title VII requirements to such transactions'').

[806] *See id.* at 47313.

[807] To the extent that a person has knowledge of facts that could lead a reasonable person to believe that a counterparty may not be a U.S. person under the definition, it might need to conduct additional diligence before relying on the representation. *See id.* at 47313, note 302.

[808] As discussed below, under Rule 908(a), the U.S.-person status of the counterparties to a security-based swap is one factor in determining whether the security-based swap is subject to Regulation SBSR. If a security-based swap is subject to Regulation SBSR, the U.S.-person status of the counterparties may influence the determination of the reporting side under Rule 901(a)(2)(ii). *See supra* Section V(B).

[809] The final rule permitting reliance on representations with respect to a counterparty's U.S.-person status applies only to the definition of ''U.S. person'' as used in Regulation SBSR and does not apply to any determination of a person's U.S.-person status under any other provision of the federal securities laws, including Commission rules, regulations, interpretations, or guidance.

[810] *See infra* Section XV(C) (discussing when a security-based swap is subject to regulatory reporting and public dissemination).

[811] *See* 79 FR 47313, note 300.

[812] Some commenters supported a cross-border jurisdictional regime that would apply security-based swap regulation on the basis of whether a direct counterparty to a security-based swap is a U.S. person. *See, e.g.,* JFMC Letter at 5; JSDA Letter at 3–4; AFR Letter at 4, 13–14. These commenters did not, however, raise this suggestion specifically in the context of Regulation SBSR. *See also* IIB Letter at 11 (observing that a status-based test for jurisdictional application would be more appropriate than a territorial approach based on the location of conduct). The Cross-Border Adopting Release addressed these comments. *See* 79 FR 47302–06.

2. Transactions Conducted Through a Foreign Branch or Office

Rule 908(a), as initially proposed, treated foreign branches and offices of U.S. persons as integral parts of the U.S. person itself.[813] Therefore, Rule 908(a), as initially proposed, would not have treated a security-based swap transaction executed by or through a foreign branch or office of a U.S. person any differently than any other transaction executed by the U.S. person.

In the Cross-Border Proposing Release, the Commission revised its approach to transactions conducted through a foreign branch. Although all transactions conducted through a foreign branch or office would have been subject to regulatory reporting, re-proposed Rule 908(a)(2)(iii) would have provided an exception to public dissemination for transactions conducted through a foreign branch when the other side is a non-U.S. person who is not a security-based swap dealer.[814] In proposing this exception to public dissemination for such transactions conducted through a foreign branch, the Commission stated that it was ''concerned that, if it did not take this approach, non-U.S. market participants might avoid entering into security-based swaps with the foreign branches of U.S. banks so as to avoid their security-based swaps being publicly disseminated.'' [815] However, Rule 908(a)(2) would have subjected a transaction conducted through a foreign branch to public dissemination if there was, on the other side, a U.S. person (including a foreign branch) [816] or a security-based swap dealer.[817]

One commenter expressed the view that foreign branches should be treated the same as non-U.S.-person security-based swap dealers for purposes of public dissemination, and that security-based swaps between two non-U.S. persons, between a non-U.S. person and a foreign branch, and between two foreign branches should not be subject to public dissemination.[818] Another commenter, however, stated that ''it should be expected that most jurisdictions would seek to apply their rules to transactions between two of their own domiciled persons, despite some of the activity being conducted abroad.'' [819] A third commenter recommended that the exception to public dissemination for foreign branches be eliminated, so that security-based swaps between a foreign branch and any non-U.S. person would be subject to public dissemination.[820]

As noted above, the Commission is adopting the requirement that any security-based swap transaction having a direct counterparty that is a U.S. person, including a security-based swap conducted through a foreign branch, shall be subject to regulatory reporting. The Commission has determined *not* to adopt the proposed exception from public dissemination for certain transactions conducted through a foreign branch. Thus, under Rule 908(a)(1)(i), as adopted, any security-based swap transaction conducted through a foreign branch is subject to both regulatory reporting and public dissemination. Under the territorial approach to the application of Title VII requirements discussed above, a foreign branch has no separate existence from the U.S. person itself. Therefore, any security-based swap transaction conducted through a foreign branch is a security-based swap executed by the U.S. person itself, and any security-based swap executed by a U.S. person exists at least in part within the United States.[821] The Title VII requirements for regulatory reporting and public dissemination apply to all security-based swap transactions that exist in whole or in part within the United States, unless an exception applies.

Upon further consideration, the Commission believes that the exception from public dissemination for foreign branches in Rule 908(a), as re-proposed, is not warranted. Granting an exception to public dissemination for certain transactions conducted through a foreign branch could have created incentives for some U.S. persons to utilize foreign branches to evade Title VII's public dissemination requirements.[822] This could be the case particularly in a foreign jurisdiction that does not apply rules for public dissemination to all or some transactions conducted through foreign branches operating within that jurisdiction. Thus, the Commission disagrees with the commenter who expressed the view that foreign branches should be treated the same as non-U.S. person security-based swap dealers for purposes of public dissemination,[823] and that security-based swaps between two non-U.S. persons, between a non-U.S. person and a foreign branch, and between two foreign branches should not be subject to public dissemination.[824]

3. Transactions Guaranteed by a U.S. Person

Regulation SBSR, as initially proposed, did not impose reporting requirements based on whether a U.S. person acts as a guarantor of a security-based swap. As re-proposed, however, Rule 908(a)(1)(ii) would have required regulatory reporting of any security-based swap that had a U.S.-person guarantor, even when no direct counterparty was a U.S. person.[825] In addition, Rule 908(a)(2), as re-proposed, would have required public dissemination of some, but not all, transactions having a U.S.-person indirect counterparty. Re-proposed Rule 908(a)(2)(ii) would have provided, in

[813] *See* Regulation SBSR Proposing Release, 75 FR 75240 (''Because a branch or office has no separate legal existence under corporate law, the branch or office would be an integral part of the U.S. person itself'').

[814] In the Cross-Border Proposing Release, the term ''transaction conducted through a foreign branch'' was defined in re-proposed Rule 900(hh) to cross-reference the definition of that term in proposed Rule 3a71–3(a)(4) under the Exchange Act, and the term ''foreign branch'' was defined in re-proposed Rule 900(n) to cross-reference the definition of foreign branch in proposed Rule 3a71–3(a)(1). In the Cross-Border Adopting Release, the Commission adopted the term ''foreign branch'' as proposed and adopted the term ''transaction conducted through a foreign branch'' with certain modifications. *See* 79 FR 47322.

[815] Cross-Border Proposing Release, 78 FR 31063.

[816] *See* re-proposed Rule 908(a)(2)(ii).

[817] *See* re-proposed Rule 908(a)(2)(iv).

[818] *See* SIFMA/FIA/Roundtable Letter at A–43.

[819] IIB Letter at 9. The commenter also noted that ''EMIR [the European Markets Infrastructure Regulation] would apply to transactions between the U.S. branches of two entities established in the EU,'' *id.,* and thus appeared to suggest that U.S. regulation should apply to transactions between two foreign branches of U.S. persons.

[820] *See* Better Markets IV at 23.

[821] *See* Cross-Border Adopting Release, 79 FR 47289 (describing the application of the security-based swap dealer *de minimis* threshold with respect to foreign branches or offices of U.S. persons). The Commission notes that a transaction conducted by a U.S. person through any other office that does not have a separate legal identity from the U.S. person, even if such office does not meet the definition of ''foreign branch'' in Rule 3a71–3(a)(2) of the Exchange Act, also is a transaction conducted by the U.S. person directly, and thus is subject to regulatory reporting and public dissemination under Rule 908(a)(1)(i), as adopted.

[822] Under Rule 908(a)(2)(iii), as re-proposed, public dissemination would have applied to a security-based swap between a U.S. person direct counterparty and a non-U.S. person (other than a security-based swap dealer) unless the U.S. person conducted the transaction through a foreign branch. Thus, the U.S. person could have directed a non-U.S.-person counterparty to interact only with its foreign branch staff, which would have made the transaction eligible for the exception provided by re-proposed Rule 908(a)(2)(iii).

[823] As discussed in Section XV(C)(6), *infra,* if a transaction involving a registered security-based swap dealer or registered major security-based swap participant does not fall within Rule 908(a)(1), Rule 908(a)(2), as adopted, subjects that transaction to regulatory reporting but not public dissemination.

[824] *See* SIFMA/FIA/Roundtable Letter at A–43.

[825] Also in the Cross-Border Proposing Release, the Commission proposed new terms ''direct counterparty'' and ''indirect counterparty'' to distinguish the primary obligor on the security-based swap from the person who guarantees the primary obligor's performance, respectively. The Commission also proposed the term ''side'' to refer to the direct counterparty and any guarantor of the direct counterparty. *See* 78 FR 31211.

relevant part, that a security-based swap is subject to public dissemination if there is an indirect counterparty that is a U.S. person on *each* side of the transaction.[826] Re-proposed Rule 908(a)(2)(iv) would have provided, in relevant part, that a transaction where one side includes a U.S.-person (including an indirect counterparty that is a U.S. person) and the other side includes a non-U.S. person that is a security-based swap dealer would be subject to public dissemination. However, a transaction would have been excepted from public dissemination if one side consisted of a non-U.S.-person direct counterparty and a U.S.-person guarantor, where neither is a security-based swap dealer or major security-based swap participant, and the other side includes no counterparty that is a U.S. person, security-based swap dealer, or major security-based swap participant (a ''covered cross-border transaction'').[827]

Commenters generally did not object to the Commission's proposal to subject transactions between direct counterparties who are U.S. persons to regulatory reporting or public dissemination. However, commenters expressed mixed views about extending regulatory reporting and public dissemination requirements to transactions involving U.S.-person guarantors.[828] One of these commenters stated that a guarantee of a security-based swap transaction by a U.S. person should not affect whether the transaction is subject to regulatory reporting or public dissemination, because there is too tenuous a nexus to justify applying Regulation SBSR on the basis of the guarantee alone.[829] Another commenter recommended that a security-based swap between two non-U.S. persons be subject to Commission regulation only where the transaction is ''guaranteed by a U.S. person for a significant value.'' [830] A third commenter, however, recommended that the Commission apply Title VII rules to transactions in which the risk flows back to a U.S. entity, including transactions involving guaranteed foreign subsidiaries and branches of U.S. entities.[831]

The Commission is adopting, as re-proposed, in Rule 908(a)(1)(ii) the requirement that any transaction involving a U.S.-person guarantor is subject to regulatory reporting. The Commission has determined to continue to consider whether to carve out covered cross-border transactions from public dissemination. Thus, Rule 908(a)(1)(i), as adopted, requires public dissemination of all security-based swap transactions having a U.S.-person guarantor.[832] This approach is consistent with the territorial approach to applying Title VII requirements, described above. A security-based swap with a U.S.-person indirect counterparty is economically equivalent to a security-based swap with a U.S.-person direct counterparty, and both kinds of security-based swaps exist, at least in part, within the United States. As the Commission observed in the Cross-Border Adopting Release, the presence of a U.S. guarantor facilitates the activity of the non-U.S. person who is guaranteed and, as a result, the security-based swap activity of the non-U.S. person cannot reasonably be isolated from the U.S. person's activity in providing the guarantee.[833] The financial resources of the U.S.-person guarantor could be called upon to satisfy the contract if the non-U.S. person fails to meet its obligations. Thus, the extension of a guarantee is economically equivalent to a transaction entered into directly by the U.S.-person guarantor. Accordingly, Rule 908(a)(1)(i), as adopted, provides that a security-based swap shall be subject to regulatory reporting and public dissemination if ''[t]here is a direct *or indirect* counterparty that is a U.S. person *on either or both sides* of the transaction'' (emphasis added). The Commission disagrees with the commenter who stated that a guarantee of a security-based swap transaction by a U.S. person should not affect whether the transaction is subject to regulatory reporting or public dissemination, because there is too tenuous a nexus to justify applying Regulation SBSR on the basis of the guarantee alone.[834] Under the territorial approach described above, any security-based swap guaranteed by a U.S. person exists at least in part within the United States, which triggers the application of Title VII requirements. The Commission believes that this is true regardless of whether a particular guarantee is ''for a significant value.'' [835] Furthermore, if the Commission does not require regulatory reporting of security-based swaps that are guaranteed by U.S. persons—in addition to security-based swaps having a U.S.-person direct counterparty—the Commission and other relevant authorities could be less likely to detect potential market abuse or the build-up of potentially significant risks within individual firms or groups or more widespread systemic risks to the U.S. financial system.

The Commission anticipates seeking additional comment on whether or not to except covered cross-border transactions from public dissemination in the future. Furthermore, as discussed in the proposed compliance schedule for Rules 901, 902, 903, 904, 905, 906, and 908 of Regulation SBSR set forth in the Regulation SBSR Proposed Amendments Release, the Commission is proposing to defer the compliance date for Rule 908(a)(1)(i) with respect to the public dissemination of covered cross-border transactions until such time as the Commission has received and considered comment on such an exception. Thus, although covered cross-border transactions are subject to public dissemination under Rule 908(a)(1)(i), as adopted, there would be no public dissemination of any such transaction until the Commission considers whether these transactions should be excepted from public dissemination.

[826] The Commission noted in the Cross-Border Proposing Release that, where U.S. persons have an interest on both sides of a transaction, even if indirectly, the transaction generally should be subject to Title VII's public dissemination requirement. *See* 78 FR 31062.

[827] As used in this release, a ''covered cross-border transaction'' refers to a transaction that meets the description above and will not be submitted to clearing at a registered clearing agency having its principal place of business in the United States.

[828] *See* SIFMA/FIA/Roundtable Letter at A–41; ESMA Letter at 3; AFR Letter at 4, 13–14.

[829] *See* SIFMA/FIA/Roundtable Letter at A–41.

[830] ESMA Letter at 3.

[831] *See* AFR Letter at 4, 13–14 (noting that the geographic location of the entities ultimately responsible for security-based swap liabilities should determine the application of the Commission's rules implementing the Dodd-Frank Act). Another commenter stated that the proposed definition of ''indirect counterparty'' in Regulation SBSR implies that an indirect counterparty can cause a trade to be subject to reporting even in cases where the direct counterparties to the trade would not lead to the conclusion that the trade is reportable. The commenter recommended that the Commission amend the definition of ''indirect counterparty'' to make it clear that its scope is limited to U.S.-person guarantors and not all guarantors, to be consistent with the intent demonstrated by the Commission in the preamble where reference is made to U.S.-person guarantors. *See* ISDA IV at 4. Although the Commission has not amended the definition of ''indirect counterparty'' in this manner, such an amendment is not necessary because Rule 908(a)(i), as adopted, effectively reaches the same result. Rule 908(a)(i) provides that a security-based swap will be subject to regulatory reporting and public dissemination if there is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction.

[832] As discussed below, compliance with Rule 908(a)(1)(i) is not required until the Commission establishes a compliance date for this provision.

[833] *See* 79 FR 47289 (discussing dealing transactions of non-U.S. persons that are subject to recourse guarantees by their U.S. affiliates).

[834] *See* SIFMA/FIA/Roundtable Letter at A–41.

[835] *See* ESMA Letter at 3.

4. Transactions Accepted for Clearing by a U.S. Clearing Agency

Re-proposed Rules 908(a)(1)(iv) and 908(a)(2)(v) would have required regulatory reporting and public dissemination, respectively, of security-based swaps that are ''cleared through a clearing agency having its principal place of business in the United States.'' One commenter agreed that ''Dodd-Frank's reporting requirements should apply to any transaction that . . . was cleared through a registered clearing organization having its principal place of business in the U.S.'' [836] Two other commenters objected.[837] One of these commenters observed that Regulation SBSR could require regulatory reporting and public dissemination of transaction information before the transaction is submitted for clearing; as a result, circumstances could arise where the sides would not know whether a particular security-based swap is subject to regulatory reporting and public dissemination until after reporting deadlines have passed.[838] The other commenter argued that the proposed requirement might discourage market participants from clearing transactions in the United States, which would be contrary to the objective of reducing systemic risk.[839] Another commenter argued that a transaction between two non-U.S. persons that is cleared through a clearing agency having its principal place of business in the United States should not be subject to public dissemination, ''although the clearing agency can provide information for regulatory purposes.'' [840]

The Commission is adopting Rule 908(a)(1)(ii) with two modifications. The rule, as adopted, provides that a security-based swap shall be subject to regulatory reporting and public dissemination if ''[t]he security-based swap is accepted for clearing by a clearing agency having its principal place of business in the United States.'' Rule 908(a)(1)(ii), as adopted, is consistent with the territorial approach discussed above. Just as a security-based swap to which a U.S. person is a direct or indirect counterparty exists, at least in part, within the United States, a security-based swap that is accepted for clearing by a clearing agency having its principal place of business in the United States also exists, at least in part, within the United States. Such acceptance creates ongoing obligations that are borne by a U.S. person and thus are properly viewed as existing within the United States.[841]

The Commission acknowledges the concerns of the commenter who observed that Regulation SBSR, as re-proposed, could have required regulatory reporting and public dissemination of transaction information before the transaction is submitted for clearing.[842] Currently, clearing in the security-based swap market is voluntary. Therefore, counterparties—if they decide to clear a transaction at all—might not submit the transaction to a clearing agency until some time after it is executed. The final rule reflects the Commission's view that, if a security-based swap is subject to regulatory reporting and public dissemination solely because of Rule 908(a)(1)(ii),[843] the duty to report the trade is not triggered by the execution of the security-based swap but rather by the registered clearing agency's acceptance of the transaction for clearing.[844] The Commission believes that it would not be appropriate to link the reporting requirement to the time of execution, because the registered clearing agency's acceptance of the transaction for clearing might not take place until several days after the time of execution.

The Commission disagrees with the commenter who argued that a transaction between two non-U.S. persons that is cleared through a clearing agency having its principal place of business in the United States should not be subject to public dissemination, ''although the clearing agency can provide information for regulatory purposes.'' [845] The Commission believes that such transactions—subject to the modifications to the rule text noted above—should be subject to both regulatory reporting and public dissemination and therefore is not adopting the this commenter's recommendation. For the reasons described above, the Commission believes that such transactions exist at least in part within the United States; therefore, Title VII's requirements for both regulatory reporting and public dissemination properly apply to such transactions. This approach will permit the Commission and other relevant authorities the ability to observe in a registered SDR all of the alpha transactions that have been accepted by a registered clearing agency having its principal place of business in the United States and to carry out oversight of security-based swaps that exist at least in part within the United States. Furthermore, the Commission believes that public dissemination of such transactions will have value to participants in the U.S. security-based swap market, who are likely to trade the same or similar products, as these products have been made eligible for clearing by a registered clearing agency having its principal place of business in the United States.[846]

Furthermore, the Commission disagrees with the commenter who argued that requiring regulatory reporting and public dissemination of transactions cleared through a U.S. clearing agency is likely to discourage market participants from clearing transactions in the United States.[847] The Commission questions whether the commenters' assertion would in fact come to pass. Market participants are likely to consider multiple factors when deciding whether and where to clear a security-based swap. These factors could include the cost of clearing, the

[836] *Id.* at 4.

[837] *See* CME II at 5; SIFMA/FIA/Roundtable Letter at A–42.

[838] *See* CME II at 5.

[839] *See* SIFMA/FIA/Roundtable Letter at A–42.

[840] ISDA/SIFMA I at 19. The Regulation SBSR Proposed Amendments Release addresses the issue of whether registered clearing agencies should be required to report security-based swap transaction information to a registered SDR.

[841] *See* Cross-Border Adopting Release, 79 FR 47302–03, note 186 (explaining that security-based swap activity that ''results in a transaction involving a U.S. counterparty creates ongoing obligations that are borne by a U.S. person, and thus is properly viewed as occurring within the United States'').

[842] *See* CME II at 5.

[843] A transaction also could be subject to regulatory reporting and public dissemination because it meets the first prong of Rule 908(a)(1): It could have a U.S. person on either or both sides of the transaction. Such a transaction must be reported within 24 hours after the time of execution, regardless of whether the transaction is accepted for clearing. *See* Rule 901(j).

[844] *See supra* Sections II(A)(2)(a) and II(B)(2) (explaining that Rule 901(j) provides that the reporting timeframes applicable to Rules 901(c) and 901(d) are triggered by acceptance for clearing, not the time of execution, if a security-based swap is subject to regulatory reporting and public dissemination solely by operation of Rule 908(a)(1)(ii)).

[845] ISDA/SIFMA I at 19.

[846] Another commenter argued that, if the Commission applied Regulation SBSR to security-based swaps involving non-U.S. counterparties that nevertheless are cleared through a clearing agency having its principal place of business in the United States, the Commission could require reporting of such transactions to a registered SDR ''without exercising further jurisdiction over'' the transaction. Société Générale Letter at 12. The commenter believed that ''[t]his solution would provide the Commission and U.S. market participants with information about swaps cleared in the United States without conflicting with foreign regulatory schemes.'' *Id.* The Commission's decision to require such transactions to be reported and publicly disseminated pursuant to Regulation SBSR does not necessarily indicate that they will be subjected to other requirements of Title VII. The Commission intends to address the scope of each of those requirements, including their applicability to the types of transactions identified by this commenter, in subsequent rulemakings.

[847] *See* SIFMA/FIA/Roundtable Letter at A–42.

types of products that can be cleared, the safeguards that clearing agencies put in place for customer funds, and clearing agency policies on netting and margin. Commenters offered no support for the assertion that the application of regulatory reporting and public dissemination requirements to transactions that are accepted for clearing by a U.S. clearing agency would be a deciding or even a significant factor in whether to clear or the choice of clearing agency. Even if this assertion were true, however, the Commission believes that it is appropriate, for the reasons discussed above, to subject these transactions to regulatory reporting and public dissemination.

Finally, the Commission recognizes that the reporting hierarchy in Rule 901(a)(2)(ii), as adopted, does not assign reporting obligations for two kinds of cross-border transaction: (1) A transaction where there is no U.S. person, registered security-based swap dealer, or registered major security-based swap participant on either side; and (2) a transaction where there is no registered security-based swap dealer or registered major security-based swap participant on either side and there is a U.S. person on only one side. If such a transaction is accepted for clearing by a registered clearing agency having its principal place of business in the United States, neither side—under Regulation SBSR as adopted by the Commission—is required to report the transaction to a registered SDR. However, as described in Section V(B), *supra,* the Commission anticipates soliciting further comment on how Regulation SBSR should be applied to transactions involving unregistered non-U.S. persons, including how reporting duties should be assigned for the two kinds of transaction noted above.

5. Transactions Involving a Registered Security-Based Swap Dealer or Registered Major Security-Based Swap Participant That Is Not a U.S. Person

Under re-proposed Rule 908(a)(1)(iii), a security-based swap would have been subject to regulatory reporting if there is a direct or indirect counterparty that is a security-based swap dealer or major security-based swap participant on either side of the transaction, regardless of the counterparties' place of domicile and regardless of the place of execution of the transaction. Under Rule 908(a), as initially proposed, a counterparty's status as a security-based swap dealer or major security-based swap participant would not by itself have triggered reporting obligations for a particular security-based swap.[848]

One commenter recommended expanding the public dissemination requirement to include security-based swaps that occur outside the United States between a non-U.S. person security-based swap dealer and a non-U.S. person that is not guaranteed by a U.S. person,[849] and between two non-U.S. person security-based swap dealers.[850]

Rule 908(a)(2), as adopted, provides: ''A security-based swap that is not included within paragraph (a)(1) of this section shall be subject to regulatory reporting but not public dissemination if there is a direct or indirect counterparty on either or both sides of the transaction that is a registered security-based swap dealer or a registered major security-based swap participant.'' [851] Thus, a security-based swap between a non-U.S. person registered security-based swap dealer or registered major security-based swap participant and another non-U.S. person (which could include another non-U.S. person registered security-based swap dealer or registered major security-based swap participant), and where neither direct counterparty is guaranteed by a U.S. person, would be subject to regulatory reporting but not public dissemination. This treatment of security-based swaps involving non-U.S. person registered security-based swap dealers and non-U.S. person registered major security-based swap participants is generally consistent with re-proposed Rule 908(a); the language of final Rule 908(a)(2) is designed to clarify that outcome.[852]

The Commission is not at this time taking the view that a security-based swap involving a registered security-based swap dealer or registered major security-based swap participant, for that reason alone, exists within the United States. Therefore, the Commission is not subjecting any transactions involving a non-U.S.-person registered security-based swap dealer or registered major security-based swap participant, for its registration status alone, to any requirement under Regulation SBSR based on a territorial application of Title VII. However, the Commission is requiring non-U.S.-person registered security-based swap dealers and registered major security-based swap participants to report their security-based swap transactions pursuant to Rule 908(a)(2).[853] Requiring reporting to a registered SDR of all transactions entered into by registered security-based swap dealers and registered major security-based swap participants will provide the Commission and other relevant authorities with important information to help with the assessment of their positions and financial condition.[854] Such information could in turn assist the Commission and other relevant authorities in assessing and addressing potential systemic risks caused by these security-based swap positions, or in detecting insider trading or other market abuse.

The Commission notes that a non-U.S. person that is registered as a security-based swap dealer or major security-based swap participant, when reporting a transaction that falls within Rule 908(a)(2), must comply with the policies and procedures of the registered SDR regarding how to flag the transaction as not subject to public dissemination. The Commission would not view a registered SDR as acting inconsistent with Rule 902 for publicly disseminating a security-based swap that falls within Rule 908(a)(2) if the reporting side had failed to appropriately flag the transaction.

6. No Final Rule Regarding Transactions Conducted Within the United States.

Under re-proposed Rule 908(a)(1)(i), a security-based swap would have been subject to regulatory reporting if it was a transaction conducted within the

[848] *See* proposed Rule 908(a); Regulation SBSR Proposing Release, 75 FR 75239–40.

[849] *See* Better Markets IV at 23.

[850] *See id.* at 24.

[851] A security-based swap involving a U.S.-person that is registered as a security-based swap dealer or major security-based swap participant is included in Rule 908(a)(1) and is thus subject to both regulatory reporting and public dissemination. A security-based swap between a non-U.S. person that is registered as a security-based swap dealer or major security-based swap participant and a U.S. person (including a foreign branch or office) also is included in Rule 908(a)(1).

[852] Rule 908(a)(1)(iii), as re-proposed, would have required regulatory reporting of a security-based swap having a direct or indirect counterparty that is a registered security-based swap dealer or registered major security-based swap participant on either side of the transaction. However, Rule 908(a)(2), as re-proposed, did not list the existence of a registered security-based swap dealer or registered major security-based swap participant on either side of the transaction, for that reason alone, as triggering public dissemination.

[853] *See* Section 15F(f)(1)(A) of the Exchange Act, 15 U.S.C. 78o–10(f)(1)(A) (providing that each registered security-based swap dealer and major security-based swap participant ''shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the registered security-based swap dealer or major security-based swap participant'').

[854] In the Cross-Border Proposing Release, the Commission noted its longstanding view that an entity that has registered with the Commission subjects itself to the entire regulatory system governing such regulated entities. *See* 78 FR 30986.

United States.[855] Re-proposed Rule 908(a)(1)(i) preserved the principle—but not the specific language—from the initial proposal that a security-based swap would be subject to regulatory reporting if it is executed in the United States.[856] When the Commission re-proposed Rule 908(a)(1)(i) in the Cross-Border Proposing Release, the Commission expressed concern that the language in the Regulation SBSR Proposing Release could have required a security-based swap to be reported if it had only the slightest connection with the United States.[857]

Re-proposed Rules 908(a)(1)(i) and 908(a)(2)(i) would have subjected a security-based swap transaction to Regulation SBSR's regulatory reporting and public dissemination requirements, respectively, if the security-based swap was a ''transaction conducted within the United States.'' Commenters expressed divergent views regarding this provision [858] and, after careful consideration, the Commission has decided not to adopt re-proposed Rule 908(a)(1)(i) or 908(a)(2)(i) at this time. As discussed above, the Commission anticipates seeking additional public comment on whether and, if so, how regulatory reporting and public dissemination requirements should be applied to transactions involving non-U.S. persons when they engage in conduct within the United States.[859]

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

As-proposed, Rule 908(b) would have provided that, notwithstanding any other provision of Regulation SBSR, a direct or indirect counterparty to a security-based swap would not incur any obligation under Regulation SBSR unless the counterparty is:

(1) A U.S. person;

(2) a security-based swap dealer or major security-based swap participant; or

(3) a counterparty to a transaction conducted within the United States.

The Commission received no comments that specifically addressed re-proposed Rule 908(b).[860]

At this time, the Commission is adopting only the first two prongs of Rule 908(b). Thus, Rule 908(b), as adopted, provides that, notwithstanding any other provision of Regulation SBSR, a person shall not incur any obligation under Regulation SBSR unless it is a U.S. person, a registered security-based swap dealer, or a registered major security-based swap participant. As discussed above, U.S. persons can be subjected to requirements under Title VII because their transactions, whether undertaken directly or indirectly, exist at least in part within the United States. Furthermore, registered security-based swap dealers and registered major security-based swap participants are required to report their security-based swap transactions.[861]

Rule 908(b) is designed to specify the types of persons that will incur duties under Regulation SBSR. If a person does not come within any of the categories enumerated by Rule 908(b), it would not incur any duties under Regulation SBSR. Under Rule 908(b), as adopted, a non-U.S. person incurs no duties under Regulation SBSR unless it is a *registered* security-based swap dealer or *registered* major security-based swap participant. The Commission believes that this modification will reduce assessment costs and provide greater legal certainty to counterparties engaging in cross-border security-based swaps. The Commission anticipates soliciting additional public comment on whether regulatory reporting and/or public dissemination requirements should be extended to transactions occurring within the United States between non-U.S. persons and, if so, which non-U.S. persons should incur reporting duties under Regulation SBSR.

E. Substituted Compliance—Rule 908(c)

1. General Considerations

The security-based swap market is global in scope, and relevant authorities around the globe are in the process of adopting security-based swap reporting and public dissemination requirements within their jurisdictions. Once these new requirements are finalized and take effect, market participants that engage in security-based swap transactions involving more than one jurisdiction could be subject to conflicting or duplicative reporting or public dissemination obligations. As initially proposed, Regulation SBSR did not contemplate that the reporting and public dissemination requirements associated with cross-border security-based swaps could be satisfied by complying with the rules of a foreign jurisdiction instead of U.S. rules. Thus, in many cases, counterparties to a security-based swap would have been required to comply with proposed Regulation SBSR even if reporting of a security-based swap also was required under the rules of a foreign jurisdiction.

As discussed in the Cross-Border Proposing Release,[862] a number of commenters urged the Commission to allow compliance with comparable home country requirements to substitute for compliance with the parallel U.S. requirements.[863] In response to those comments and recognizing that other jurisdictions may implement regulatory reporting and public dissemination regimes for security-based swaps that are comparable to the requirements set forth in Title VII and Regulation SBSR, the Commission re-proposed Rule 908 in the Cross-Border Proposing Release to include a new paragraph (c). Rule 908(c), as re-proposed, would have permitted, under certain conditions, substituted compliance for regulatory reporting and public dissemination requirements relating to security-based swaps. The Commission preliminarily believed that the availability of substituted compliance would reduce the likelihood that market participants would be subject to potentially conflicting or duplicative sets of rules while still meeting the statutory and policy objectives of Title VII. Re-proposed Rule 908(c) would have

[855] A security-based swap would be a ''transaction conducted within the United States'' if it is solicited, negotiated, executed, or booked within the United States, by or on behalf of either counterparty to the transaction, regardless of the location, domicile, or residence status of either counterparty to the transaction. *See* proposed Rule 240.3a71–3(a)(5) under the Exchange Act; Cross-Border Proposing Release, 78 FR 31297; re-proposed Rule 900(ii). The word ''counterparty'' as used within this term would have the same meaning as ''direct counterparty'' in re-proposed Rule 900(j) of Regulation SBSR. *See* Cross-Border Proposing Release, 78 FR 31061.

[856] Rule 908(a), as initially proposed, would have required regulatory reporting of any security-based swap that is ''executed in the United States or through any means of interstate commerce.'' *See* Regulation SBSR Proposing Release, 75 FR 75287.

[857] *See* 78 FR 31061.

[858] *See* ABA Letter at 3; Citadel Letter at 1–2; Cleary III at 28; IAA Letter at 6; IIB Letter at 9; SIFMA/FIA/Roundtable Letter at A–42; Pearson Letter at 2; FOA Letter at 7–8; JFMC Letter at 4–5; ISDA IV at 18.

[859] In addition, the Commission has authority to promulgate rules, including additional regulatory requirements, applicable to persons transacting a business in security-based swaps ''without the jurisdiction of the United States'' when ''necessary or appropriate'' to prevent evasion of the provisions of Title VII of the Dodd-Frank Act. The Commission is not necessarily exercising the full extent of its authorities today but will be monitoring for gaps in reporting of swaps outside the United States that could be an evasion of the Commission's rules and regulations. *See* Section 30(c) of the Exchange Act, 15 U.S.C. 78dd(c).

[860] However, several commenters argued that specific requirements under Regulation SBSR should not apply to certain kinds of counterparties in certain circumstances. All of these comments are discussed in relation to Rule 908(a) in the section immediately above.

[861] *See supra* Section XV(C)(5), note 853 and accompanying text.

[862] *See* 78 FR 31092.

[863] *See, e.g.,* Cleary III at 15–16; Davis Polk I at 7, 11; Davis Polk II at 21–22; Société Générale Letter at 11; CCMR II at 2. *See also* Cross-Border Adopting Release, 79 FR 47357–58 (discussing several comments relating to substituted compliance issues generally).

specified the security-based swaps that would be eligible for substituted compliance and would have established procedures for market participants to request, and for the Commission to issue, substituted compliance orders.

As discussed in detail below, the Commission is adopting Rule 908(c) substantially as re-proposed, with minor modifications also described below. The Commission believes in general that, if a foreign jurisdiction applies a comparable system for the regulatory reporting and public dissemination of security-based swaps, it would be appropriate to consider permitting affected market participants to comply with the foreign requirements to satisfy the comparable requirements of Regulation SBSR. Where the Commission finds that a foreign jurisdiction's reporting and public dissemination requirements are comparable to those implemented by the Commission, Rule 908(c) provides that the Commission may make a substituted compliance determination with respect to such jurisdiction for these requirements. The Commission believes that permitting substituted compliance could reduce the likelihood that market participants would be subject to conflicting or duplicative regulation with respect to a security-based swap transaction.

In adopting Rule 908(c), the Commission is not making any assessment at this time regarding whether any foreign jurisdiction's requirements for regulatory reporting and public dissemination of security-based swaps are comparable to Regulation SBSR. Furthermore, because the analysis of any particular foreign jurisdiction would be very fact specific, it is impractical for the Commission to opine at this time on whether specific aspects of a foreign system would or would not allow the Commission to make a comparability determination. In view of the many technical differences that could exist between the Commission's Title VII rules and parallel requirements in other jurisdictions, the Commission stated in the Cross-Border Proposing Release that ''the Commission would endeavor to take a holistic approach in making substituted compliance determinations—that is, we would ultimately focus on regulatory outcomes as a whole with respect to the requirements within the same category rather than a rule-by-rule comparison.'' [864] The Commission continues to believe that this approach to comparability is appropriate, and intends to focus on regulatory outcomes as a whole when considering whether to make a comparability determination.

2. Substituted Compliance Procedure—Rule 908(c)(2)(i)

Rule 908(c)(2)(i), as re-proposed, would have allowed the Commission, conditionally or unconditionally, by order, to make a substituted compliance determination regarding regulatory reporting and public dissemination with respect to a foreign jurisdiction ''if that foreign jurisdiction's requirements for regulatory reporting and public dissemination of security-based swaps are comparable to otherwise applicable requirements'' under Regulation SBSR.

A number of commenters endorsed the Commission's proposal to permit substituted compliance with Regulation SBSR.[865] One of these commenters noted, for example, that substituted compliance would reduce burdens on businesses in the United States and elsewhere without weakening oversight, thus allowing firms to use funds more efficiently.[866] However, two commenters recommended that the Commission narrow the proposed availability of substituted compliance. One of these commenters stated that the Commission's proposed controls on substituted compliance would be inadequate.[867] The commenter further stated that, although substituted compliance potentially has a legitimate role to play in a cross-border regulatory regime, the greater the scope for substituted compliance, the stricter the controls should be on the ability to substitute foreign rules for U.S. rules.[868] The other commenter stated that the Cross-Border Proposing Release failed to provide an adequate legal or policy justification for allowing substituted compliance.[869] This commenter believed that, rather than using substituted compliance, the Commission should exercise its exemptive authority sparingly and only upon finding an actual conflict exists with a particular foreign regulation.[870]

The Commission has carefully considered these comments and determined to adopt Rule 908(c)(2)(i) as re-proposed, with one modification, as described in Section XV(E)(3), *infra.* Permitting substituted compliance should reduce the likelihood that market participants face duplicative or contradictory reporting or public dissemination requirements, and thereby decrease costs and administrative burdens on market participants without compromising the regulatory goals of Title VII. The requirements for substituted compliance are designed to ensure that the Title VII requirements for regulatory reporting and public dissemination of security-based swaps are being satisfied, albeit through compliance with the rules of a foreign jurisdiction rather than the specific provisions of Regulation SBSR.

3. Security-Based Swaps Eligible for Substituted Compliance—Rule 908(c)(1)

Rule 908(c)(1), as re-proposed, would have provided that compliance with the regulatory reporting and public dissemination requirements in Sections 13(m) and 13A of the Exchange Act, and the rules and regulations thereunder, may be satisfied by compliance with the rules of a foreign jurisdiction that is the subject of a substituted compliance order issued by the Commission, provided that at least one of the direct counterparties to the security-based swap is either a non-U.S. person or a foreign branch, and the transaction is not solicited, negotiated, or executed within the United States. Thus, under re-proposed Rule 908(c)(1), certain kinds of security-based swaps would *not* have been eligible for substituted compliance even if they were subject to reporting and public dissemination requirements in a foreign jurisdiction.[871] Specifically, a security-based swap between *two U.S. persons* would *not* have been eligible for substituted compliance with respect to regulatory reporting and public dissemination, even if the security-based swap was solicited, negotiated, and executed outside the United States.[872] Furthermore, re-proposed Rule 908(c)(1) would not have allowed for the possibility of substituted compliance with respect to regulatory reporting and public dissemination if the relevant direct counterparty that was

[864] 78 FR 31085–86.

[865] *See* ESMA Letter at 2–3; FOA Letter at 2–3; IIF Letter at 1–2; JSDA Letter at 2; MFA/AIMA Letter at 5–7.

[866] *See* IIF Letter at 3.

[867] *See* AFR Letter at 8.

[868] *See id.*

[869] *See* Better Markets IV at 3, 24–25 (noting that the Commission's duty is to protect investors and the public consistent with congressional policy, not to minimize the costs, burdens, or inconvenience that regulation imposes on industry).

[870] *See id.* at 26.

[871] If the rules of a foreign jurisdiction did not apply to the security-based swap, there would be no need to consider the possibility of substituted compliance, because there would be no foreign rules that could substitute for the applicable U.S. rules.

[872] As noted in the Cross-Border Proposing Release, this assumed that neither U.S. person is acting through a foreign branch. If either or both U.S. persons is acting through a foreign branch, the security-based swap between those U.S. persons *would* have been eligible for substituted compliance under Rule 908(c)(1), as re-proposed. *See* 78 FR 31093–94, note 1149.

either a non-U.S. person or foreign branch (or its agent)—regardless of place of domicile—solicited, negotiated, or executed a security-based swap from within the United States.

The Commission received two comment letters in response to re-proposed Rule 908(c)(1), both of which addressed the proposal to limit substituted compliance availability to security-based swaps that are not solicited, negotiated, or executed in the United States.[873] One of these commenters recommended that the Commission remove this requirement altogether.[874] The other commenter noted that, as a general matter, it is virtually impossible to determine on a trade-by-trade basis whether each specific contact with a counterparty or potential counterparty has some nexus to the United States, and urged the Commission to subject security-based swaps to Title VII regulation solely according to whether counterparties are U.S. persons.[875]

In response to these comments, the Commission has decided to adopt a modified version of Rule 908(c)(1) that does not condition substituted compliance eligibility on the location of execution, negotiation, or solicitation of a particular transaction.[876] Under Rule 908(c)(1), as adopted, a security-based swap is eligible for substituted compliance with respect to regulatory reporting and public dissemination if at least one of the direct counterparties to the security-based swap is either a non-U.S. person or a foreign branch. Thus, Rule 908(c)(1) permits a security-based swap between a U.S. person and the New York branch of a foreign bank (*i.e.,* a non-U.S. person with operations inside the United States) to be eligible for substituted compliance, provided that a substituted compliance order is in effect with respect to the home country of the foreign bank that operates the U.S. branch. The standard in Rule 908(c)(1), as adopted, is consistent with the Commission's decision not to impose, at this time, reporting or public dissemination requirements based solely on whether a transaction is conducted within the United States.

Regarding which security-based swaps are eligible for the possibility of substituted compliance, the Commission believes that, if at least one direct counterparty to a security-based swap is a foreign branch or a non-U.S. person (even if the non-U.S. person is a registered security-based swap dealer or registered major security-based swap participant, or is guaranteed by a U.S. person), the security-based swap should be eligible for consideration for a substituted compliance determination under Regulation SBSR. This approach recognizes that a transaction involving a foreign branch or a non-U.S. person faces the possibility of being subject to reporting requirements in multiple jurisdictions (the United States and another jurisdiction whose rules may govern the transaction). The approach adopted by the Commission of allowing any transaction involving a foreign branch or non-U.S. person to be eligible to be considered for substituted compliance is designed to limit disincentives for non-U.S. persons to transact security-based swaps with U.S. persons by allowing for the possibility that compliance with the rules of a foreign jurisdiction could be substituted for compliance with the specific provisions of Regulation SBSR when the non-U.S. person transacts with a U.S. person. This approach also would allow for a reasonable minimization of reporting burdens on foreign branches and non-U.S. persons in situations where the local jurisdiction in which they operate does not offer the possibility of substituted compliance.

4. Requests for Substituted Compliance—Rule 908(c)(2)(ii)

Rule 908(c)(2)(ii), as re-proposed, would have established the process for market participants to follow when applying for a substituted compliance determination: ''Any person that executes security-based swaps that would, in the absence of a substituted compliance order, be required to be reported pursuant to [Regulation SBSR] may file an application, pursuant to the procedures set forth in § 240.0–13 of this chapter, requesting that the Commission make a substituted compliance determination regarding regulatory reporting and public dissemination with respect to a foreign jurisdiction the rules of which also would require reporting and public dissemination of those security-based swaps. Such application shall include the reasons therefor and such other information as the Commission may request.''

A number of commenters recommended that the Commission permit foreign regulators, as well as market participants, to file an application for a substituted compliance determination.[877] Some of these commenters noted that foreign regulatory authorities would be well-positioned to describe their regulatory frameworks and manner of supervision, and, in any event, their involvement would be needed to negotiate the memorandum of understanding that the Commission proposed to require as a precondition of granting a substituted compliance order.[878] One commenter also stated that the CFTC's Cross-Border Guidance [879] contemplates accepting applications for substituted compliance from non-U.S. regulators.[880] Two commenters suggested that substituted compliance applications should be submitted by foreign regulatory authorities, rather than individual firms.[881]

The Commission is adopting Rule 908(c)(2)(ii) largely as re-proposed, with a few minor revisions. First, consistent with the adoption of Rule 0–13 in the Cross-Border Adopting Release, the Commission has revised Rule 908(c)(2)(ii) to permit foreign financial regulatory authorities to submit applications for substituted compliance determinations on behalf of market participants subject to their jurisdictions.[882]

[873] *See* ISDA II at 5; SIFMA/FIA/Roundtable Letter at 3–4. A third commenter expressed the view that any swap involving a U.S. person and a non-U.S. person should be eligible for substituted compliance. *See* CCMR II at 2–3.

[874] *See* ISDA II at 5.

[875] *See* SIFMA/FIA/Roundtable Letter at 3–4. This commenter did not raise this comment expressly in the context of Rule 908(c)(1), however.

[876] Rule 908(c)(1), as adopted, provides: ''Compliance with the regulatory reporting and public dissemination requirements in sections 13(m) and 13A of the Act (15 U.S.C. 78m(m) and 78m–1), and the rules and regulations thereunder, may be satisfied by compliance with the rules of a foreign jurisdiction that is the subject of a Commission order described in paragraph (c)(2) of this section, provided that at least one of the direct counterparties to the security-based swap is either a non-U.S. person or a foreign branch.''

[877] *See* ABA Letter at 5; ICI II at 11; IIB Letter at 27; IIF Letter at 4; ISDA II at 4; JFMC Letter at 7–8; FOA Letter at 4 (noting that the Commission should begin discussions with the European Commission to establish an agreed approach for the coordinated oversight of the transatlantic security-based swap markets); SIFMA/FIA/Roundtable Letter at A–36.

[878] *See* ICI II at 11; ISDA II at 4. Re-proposed Rule 908(c)(2)(iv), described below, would have required the Commission to enter into a supervisory and enforcement memorandum of understanding or other agreement with the relevant foreign regulator(s) prior to issuing a substituted compliance order covering a foreign jurisdiction.

[879] Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 FR 45292 (July 26, 2013).

[880] *See* ISDA II at 4.

[881] *See* ESMA Letter at 3 (recommending that comparability determinations should be requested at the European Union-level, rather than by individual firms); JSDA Letter at 2. *See also* Pearson Letter at 3 (recommending that the review of a foreign regime be conducted in cooperation solely with the relevant foreign regulators or legislators, not firms).

[882] *See* 79 FR 47358 (''We are persuaded that allowing foreign regulators to submit such requests would promote the completeness of requests and promote efficiency in the process for considering such requests, in light of foreign regulators' expertise regarding their domestic regulatory system, including the effectiveness of their

Second, Rule 908(c)(2)(ii), as re-proposed, would have permitted filing by any ''person that executes security-based swaps.'' Read literally, this language in the re-proposed rule could have permitted persons who are not subject to Regulation SBSR to seek a substituted compliance determination. The Commission seeks to limit the scope of persons who can apply for substituted compliance determinations to foreign financial regulators and parties that would be subject to Regulation SBSR, because these persons have the greatest knowledge about the foreign jurisdiction in question. Moreover, in the case of market participants active in that jurisdiction, they will be directly impacted by potentially overlapping rules and thus have the greatest interest in making the strongest case for substituted compliance. Accordingly, Rule 908(c)(2)(ii), as adopted, permits a ''party that potentially would comply with requirements under [Regulation SBSR] pursuant to a substituted compliance order,'' [883] or the relevant foreign financial regulatory authority or authorities in that jurisdiction,[884] to file an application requesting a substituted compliance determination.[885]

Third, the Commission has determined not to include the final sentence of re-proposed Rule 908(c)(2)(ii)—''[s]uch application shall include the reasons therefor and such other information as the Commission may request''—in final Rule 908(c)(2)(ii). Rule 0–13(e) under the Exchange Act, as adopted in the Cross-Border Adopting Release, provides detailed requirements regarding the information required to be submitted (*e.g.,* supporting documentation, including information regarding applicable regulatory requirements, compliance monitoring by foreign regulators, and applicable precedent).[886] In light of the cross-reference to Rule 0–13 in final Rule 908(c)(2)(ii), the last sentence of re-proposed Rule 908(c)(2)(ii) is unnecessary and therefore is not included in final Rule 908(c)(2)(ii).

5. Findings Necessary for Substituted Compliance—Rule 908(c)(2)(iii)

Rule 908(c)(2)(iii), as re-proposed, would have provided that, in making a substituted compliance determination with respect to a foreign jurisdiction, the Commission shall take into account such factors as it determines are appropriate, such as the scope and objectives of the relevant foreign regulatory requirements, as well as the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised, by the foreign financial regulatory authority to support oversight of its regulatory reporting and public dissemination system for security-based swaps. Furthermore, Rule 908(c)(2)(iii), as re-proposed, would have provided that the Commission would not make a substituted compliance determination with respect to regulatory reporting and public dissemination unless the Commission found that the relevant foreign regulatory regime provided for the reporting and public dissemination of comparable data elements in a manner and timeframe comparable to those required by Regulation SBSR.[887] As a prerequisite to any substituted compliance determination, re-proposed Rule 908(c)(2)(iii) also would have required that the Commission have direct electronic access to the security-based swap data held by the trade repository or foreign regulatory authority.[888] Lastly, re-proposed Rule 908(c)(2)(iii) would have required the Commission to find that any trade repository or foreign regulatory authority in the foreign jurisdiction is subject to requirements regarding data collection and maintenance; systems capacity, resiliency, and security; and recordkeeping that are comparable to the requirements imposed on registered SDRs.[889]

The Commission has determined to adopt Rule 908(c)(2)(iii) as re-proposed, subject to two minor changes, one in each of Rules 908(c)(2)(iii)(B) and 908(c)(2)(iii)(D), which are discussed below. Final Rule 908(c)(2)(iii) provides that, in making a substituted compliance determination, the Commission shall take into account such factors that it determines are appropriate, which include but are not limited to the scope and objectives of the relevant foreign regulatory requirements, as well as the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised, by the foreign financial regulatory authority to support oversight of its regulatory reporting and public dissemination system for security-based swaps. The rule further provides that the Commission shall not make such a substituted compliance determination unless it finds that:

(A) The data elements that are required to be reported pursuant to the rules of the foreign jurisdiction are comparable to those required to be reported pursuant to Rule 901;

(B) The rules of the foreign jurisdiction require the security-based swap to be reported and publicly disseminated in a manner and a timeframe comparable to those required by Regulation SBSR (or, in the case of transactions that are subject to regulatory reporting but not public dissemination, the rules of the foreign jurisdiction require the security-based swaps to be reported in a manner and timeframe comparable to those required by Regulation SBSR);

(C) The Commission has direct electronic access to the security-based swap data held by a trade repository or foreign regulatory authority to which security-based swaps are reported pursuant to the rules of that foreign jurisdiction; and

(D) Any trade repository or foreign regulatory authority in the foreign jurisdiction that receives and maintains required transaction reports of security-based swaps pursuant to the laws of that foreign jurisdiction is subject to requirements regarding data collection and maintenance; systems capacity, integrity, resiliency, availability, and security; and recordkeeping that are comparable to the requirements imposed on security-based swap data

compliance and enforcement mechanisms, and to allow for a single point of contact to facilitate the consideration of substituted compliance requests associated with the jurisdiction'').

[883] This could be either a U.S. person or a non-U.S. person that engages in activity in that jurisdiction.

[884] This formulation of final Rule 908(c)(2)(ii) closely follows the language of Rule 0–13(a) under the Exchange Act, 17 CFR 240.0–13(a), which provides in relevant part that an application for substituted compliance must be submitted to the Commission ''by a party that potentially would comply with requirements under the Exchange Act pursuant to a substituted compliance order, or by the relevant foreign financial regulatory authority or authorities.''

[885] Thus, the Commission disagrees with the commenters who argued that substituted compliance applications should be submitted only by foreign regulatory authorities, rather than individual firms. *See* ESMA Letter at 3; JSDA Letter at 2. Although obtaining information from foreign regulatory authorities could be an important aspect of the substituted compliance review, the Commission sees no basis for denying individual firms that might comply with requirements of Regulation SBSR pursuant to a substituted compliance order the ability to request substituted compliance and thereby initiate that review. *See* Cross-Border Adopting Release, 79 FR 47358 (''We are not . . . foreclosing the ability of a market participant itself to submit a request that it be able to comply with Exchange Act requirements pursuant to a substituted compliance order'').

[886] *See id.* In addition, Rule 0–13(h) requires the Commission to publish in the **Federal Register** a notice that a complete application has been submitted.

[887] *See* Cross-Border Proposing Release, 78 FR 31215.

[888] *See id.*

[889] *See id.*

repositories by the Commission's rules and regulations.[890]

Although no commenters discussed the appropriateness of considering the examination and enforcement practices of foreign regulators in making a substituted compliance determination for Regulation SBSR specifically, a number of commenters addressed the general concept of considering actual practices in the foreign jurisdiction as part of the substituted compliance determination. Certain commenters generally supported the retention by the Commission of the authority to decline to make a comparability finding based on the substantive enforcement of foreign regulatory regimes.[891] Two of these commenters noted, however, that supervisory practices differ significantly among jurisdictions.[892] One of these commenters stated: ''This lack of commonality should not be assumed to be a defect in supervisory standards; common objectives may be reached through differing means.'' [893] This commenter expressed the general view, however, that ''a general, high-level inquiry into the existence of an examination and enforcement process and institutions to support it arguably should inform views about the comparability of outcomes.'' [894]

The Commission agrees that the examination and enforcement practices of each foreign jurisdiction will need to be evaluated on a case-by-case basis, and anticipates that it will consider whether the regulatory protections provided in that jurisdiction's security-based swap markets are substantially realized through sufficiently vigorous supervision and enforcement. While the Commission believes that common objectives may be reached through differing means, the Commission also believes that compliance with a foreign jurisdiction's rules for reporting and public dissemination of security-based swaps should be a substitute for compliance with the U.S. rules only when the foreign jurisdiction has a reporting and public dissemination regime comparable to that of the United States. This determination must consider actual practices and implementation as well as written laws and regulations of the foreign jurisdiction.

a. Data Element Comparability—Rule 908(c)(2)(iii)(A)

The Commission received several comments regarding the data element comparability determination required by what is now final Rule 908(c)(2)(iii)(A). Two commenters recommended that the Commission determine whether a foreign jurisdiction has comparable security-based swap reporting requirements based on a holistic review of that jurisdiction's regulations and the local market environment.[895] Some commenters suggested that the Commission should determine whether the security-based swap reporting framework of a foreign jurisdiction is designed to achieve the G–20 goals of transparency in the derivatives markets.[896]

The Commission is adopting re-proposed Rule 908(c)(2)(iii)(A) without revision. Under the final rule, the foreign jurisdiction must require reporting of data elements comparable to those required under Rule 901 of Regulation SBSR for the Commission to make a comparability determination. If the data elements required by the foreign jurisdiction are not comparable, important information about a security-based swap might not be captured by the foreign trade repository or foreign regulatory authority. This could create gaps or inconsistencies in the information available to the Commission and impair the Commission's ability to monitor the security-based swap market. As noted in Section XV(E)(1), *supra,* the Commission generally agrees with the commenters who expressed the view that the Commission should take a ''holistic'' or ''outcomes-based'' view of another jurisdiction's rules when making a substituted compliance determination, rather than conduct a ''line-by-line'' or ''rule-by-rule'' analysis. At this time, the Commission does not believe that it is sufficient to consider only whether the data elements required by the foreign regulatory regime are designed to achieve the objectives of the G–20 with respect to reporting. The G–20 objectives are a high-level set of principles designed to guide jurisdictions in adopting reforms for the OTC derivatives markets. Therefore, the Commission believes that it is necessary and appropriate to consider whether the data elements reported under that jurisdiction's rules are comparable to those required under Rule 901 of Regulation SBSR—not whether they are comparable to the G–20 standards—in deciding whether to grant a substituted compliance determination. If the Commission took the opposite view, it would be difficult to conclude that the oversight and transparency goals of Title VII were being satisfied through compliance with the rules of the foreign jurisdiction in lieu of Regulation SBSR.[897]

b. Timeframe of Reporting and Public Dissemination—Rule 908(c)(2)(iii)(B)

The Commission also is adopting Rule 908(c)(2)(iii)(B) as re-proposed, subject to certain conforming changes.[898] Rule 908(c)(2)(iii)(B), as adopted, provides that the Commission shall not issue a substituted compliance determination unless the relevant foreign jurisdiction requires security-based swaps to be reported and publicly disseminated ''in

[890] *See* Rule 908(c)(2)(iii)(A)–(D), as adopted, and *infra* note 910.

[891] *See* ABA Letter at 5; AFR Letter at 12; Better Markets IV at 3, 29–32; ISDA II at 6.

[892] *See* FOA Letter at 6; ISDA II at 6.

[893] ISDA II at 6.

[894] *Id.*

[895] *See* JFMC Letter at 7; ISDA II at 8. Other commenters expressed a general preference for a holistic review of a relevant jurisdiction's security-based swap regulatory regime but did not expressly reference Regulation SBSR in this context. *See, e.g.,* SIFMA/FIA/Roundtable Letter at A–37–A–38; Pearson Letter at 3; IIF Letter at 5; ICI II at 11; JFMC Letter at 1; MFA/AIMA Letter at 5 (observing that a line-by-line or rule-by-rule analysis would place a significant burden on the Commission, and potentially result in disjointed regulation); ABA Letter at 5.

[896] *See* ICI II at 12; ISDA II at 8 (noting also that jurisdictions may choose to establish goals and requirements that are ancillary to the G–20 regulatory goals, but these ancillary requirements should not become a barrier to an effective cross-border compliance regime that furthers the G–20 goals). With respect to security-based swap reporting, the ''G–20 goals'' referenced by these commenters were articulated in the Leaders' Statement at the Pittsburgh Summit (September 24–25, 2009), available at: *https://www.g20.org/sites/default/files/g20_resources/library/Pittsburgh_Declaration.pdf,* last visited September 22, 2014.

[897] One commenter urged the Commission to ''replace the apparently subjective 'outcomes-based' standard for comparison with a more rigorous and objective standard based on the underlying rules.'' AFR Letter at 9. For the reasons noted above, the Commission is adopting a ''comparable'' standard, rather than the type of review suggested by the commenter. This commenter further stated: ''Another reason that 'outcomes-based' assessment may not be adequate is that the inter-operability of different rule sets may be critical to the effectiveness of the overall international regime . . . this is the case for standardization of data formats in reporting, and may also be true for various risk management elements that must be standardized across a global financial institution.'' *Id.* at 10. The Commission intends to work with foreign regulatory authorities to develop more uniform data standards to allow maximum aggregability while minimizing market participant costs and burdens that would result from having to report in different jurisdictions using different data standards and formats.

[898] As re-proposed, this rule would have provided that the Commission shall not make a substituted compliance determination unless it finds that the ''rules of the foreign jurisdiction require the security-based swap to be reported and publicly disseminated in a manner and a timeframe comparable to those required by §§ 242.900 through 242.911.'' As discussed previously, Regulation SBSR, as adopted, consists of Rules 900 through 909 under the Exchange Act. Therefore, the reference in re-proposed Rule 908(c)(2)(iii)(B) to ''§§ 242.900 through 242.911'' is being revised to read: ''§§ 242.900 through 242.909.''

a manner and a timeframe comparable to those required by [Regulation SBSR].'' Given the Title VII requirements that all security-based swaps be reported to a registered SDR and that security-based swaps be publicly disseminated in real time, the Commission believes that allowing substituted compliance with the rules of a foreign jurisdiction that has reporting timeframes and dissemination outcomes not comparable to those in the United States would run counter to the objectives and requirements of Title VII. If the Commission allowed substituted compliance for such a jurisdiction, the Commission might have access to less regulatory data about the security-based swap market, or price discovery could be less efficient, than would have been the case if Regulation SBSR applied in its entirety. Thus, for example, the Commission generally does not anticipate permitting substituted compliance with respect to regulatory reporting and public dissemination under Rule 908(c) if a foreign jurisdiction does not (among other things) impose public dissemination requirements for all security-based swaps on a trade-by-trade basis.[899] Thus, the Commission disagrees with the commenter who suggested that a non-U.S. public dissemination regime that disseminates data on an aggregate basis should be deemed comparable to Regulation SBSR.[900]

One commenter stated that ''[c]omparability should be addressed flexibly with respect to public dissemination, recognizing that in certain jurisdictions' [*sic*] transparency obligations are linked to use of a trading venue and fall on the venue.'' [901] Another commenter recommended that the Commission should not determine that a foreign jurisdiction lacks comparable security-based swap reporting rules based on technical differences in the timeframes for, or manner of, reporting.[902] Whether the Commission grants a substituted compliance determination will depend on the facts and circumstances pertaining to a particular request. Thus, it is difficult to address concerns such as those raised by these two commenters in the abstract. As the Commission noted in Section XV(E)(1), *supra,* it will assess comparability in a holistic manner rather than on a rule-by-rule basis.

c. Direct Electronic Access—Rule 908(c)(2)(iii)(C)

The Commission also is adopting Rule 908(c)(2)(iii)(C) as re-proposed. Rule 908(c)(2)(iii)(C) provides that the Commission may not issue a substituted compliance order with respect to regulatory reporting and public dissemination in a foreign jurisdiction unless ''[t]he Commission has direct electronic access to the security-based swap data held by a trade repository or foreign regulatory authority to which security-based swaps are reported pursuant to the rules of that foreign jurisdiction.'' [903] Commenters expressed differing views regarding the direct electronic access requirement in re-proposed Rule 908(c)(2)(iii)(C). One commenter expressed support for the proposed requirement, believing that direct electronic access is a critical element for adequate monitoring of risks to U.S. financial stability.[904] However, two commenters objected to the proposed direct electronic access requirement.[905] One of these commenters suggested that the Commission should not require direct electronic access at this time, but should instead wait for the ''FSB'' to develop plans ''to produce and share globally aggregated trade repository data that authorities need for monitoring systemic risks.'' [906] Another commenter ''urge[d] the Commission to take into account the issue of foreign jurisdictions' privacy laws before imposing a blanket requirement that [the Commission] have direct electronic access.'' [907]

After carefully considering the comments received, the Commission continues to believe that requiring direct electronic access to security-based swap data held by a trade repository or foreign regulatory authority is a necessary part of any substituted compliance determination. Thus, the Commission does not believe that it should rely instead on the FSB or other international bodies developing arrangements for trade repositories and relevant authorities to share information across jurisdictions. While these cross-border information-sharing arrangements are important, and the Commission will continue to participate in such efforts, granting substituted compliance without direct electronic access would not be consistent with the underlying premise of substituted compliance: That a comparable regulatory result is reached through compliance with foreign rules rather than with the corresponding U.S. rules. If the Commission were to grant substituted compliance for a foreign jurisdiction where the Commission did not have direct electronic access to the facility to which security-based swap transactions of that jurisdiction are reported, the Commission might not have access to transaction information for portions of the security-based swap market that it otherwise would have the ability to surveil.[908] If the Commission were to rely solely on international information-sharing agreements, it could face substantial delays before a foreign trade repository or foreign regulatory authority, even acting expeditiously, could compile and make available to the Commission data relating to a substantial volume of transactions. Delays in obtaining such data could compromise the ability of the Commission to supervise security-based swap market participants, or to share information with other relevant U.S. authorities in a timely fashion. Thus,

[899] Although the Commission is requiring reporting and public dissemination of security-based swaps within 24 hours of the time of execution during the first initial phase of Regulation SBSR, *see* Rule 901(j), the Commission anticipates considering provisions to implement the Title VII requirement for real-time public dissemination. Therefore, the Commission would view a foreign jurisdiction's regime for public dissemination of security-based swaps as comparable only if it (1) had rules providing for real-time public dissemination of all security-based swaps currently, or (2) was following a comparable process of moving to real-time public dissemination for all security-based swaps in phases.

[900] *See* JSDA Letter at 2. Another commenter requested that the Commission determine that Japan has comparable security-based swap reporting standards. *See* JFMC Letter at 8. This comment is beyond the scope of this rulemaking. However, after Regulation SBSR becomes effective, market participants in this jurisdiction that would rely on a substituted compliance determination, or their regulators, may submit a request for substituted compliance with respect to regulatory reporting and public dissemination if they believe that the rules in that jurisdiction satisfy the criteria for substituted compliance described in Rule 908(c).

[901] ISDA II at 9.

[902] *See* ICI II at 12.

[903] Under Rule 900(*l*), as adopted, ''direct electronic access'' has the same meaning as in Rule 13n–4(a)(5) under the Exchange Act, discussed in the SDR Adopting Release. Rule 13n–4(a)(5) defines ''direct electronic access'' to mean access, which shall be in a form and manner acceptable to the Commission, to data stored by an SDR in an electronic format and updated at the same time as the SDR's data is updated so as to provide the Commission or any of its designees with the ability to query or analyze the data in the same manner that the SDR can query or analyze the data.

[904] *See* AFR Letter at 9 (noting that the Commission should seek to analyze data from foreign repositories in conjunction with U.S.-sourced data to determine the swap exposure of an entity on a global basis).

[905] *See* IIF Letter at 7; ISDA II at 8.

[906] *Id.* at 8. The second commenter did not offer a rationale for its opposition to the proposed direct electronic access requirement. *See* IIF Letter at 7.

[907] SIFMA/FIA/Roundtable Letter at A–46 (stating that over a dozen jurisdictions have been identified where local law prohibits the disclosure of client names to non-local regulators that do not have an information-sharing treaty or agreement in place with the local regulator, some of which cannot be satisfied by counterparty consent).

[908] *See supra* note 788 (providing statistics regarding the amount of cross-border trading in the security-based swap market).

the Commission believes that direct electronic access to security-based swap data held by the foreign trade repository or foreign regulatory authority to which security-based swap transactions are reported in the foreign jurisdiction must be a prerequisite to issuing a substituted compliance order with respect to Regulation SBSR applying to that jurisdiction.

The Commission has taken into consideration the comment that certain jurisdictions have privacy laws or blocking statutes that could, in certain cases, render a foreign trade repository or foreign regulatory authority unable to provide the Commission with direct electronic access to transaction information that would include the identity of the counterparties. The Commission is not persuaded that this consideration should remove direct electronic access as a requirement for substituted compliance under Regulation SBSR. Indeed, if foreign privacy laws result in the Commission having less than comparable access to the security-based swap transaction data held at a foreign trade repository or foreign regulatory authority than the Commission otherwise would have if no substituted compliance order were in effect, then the premise of substituted compliance would not be met. Although foreign regulatory authorities would likely have access to information about security-based swap transactions that exist at least in part in their jurisdictions, these authorities might lack the ability to share this information with the Commission. As a result, it could be difficult if not impossible for the Commission or any other relevant authority, foreign or domestic, to observe the build-up of systemic risks created by the global security-based swap activity of U.S. persons. In sum, the Commission believes that, if it does not have direct electronic access to the transaction information reported to the foreign trade repository or foreign regulatory authority, substituted compliance would not yield a comparable outcome and the requirements of Rule 908(c)(2) would not be met.[909] The Commission believes that, in this situation, the specific requirements of Regulation SBSR should continue to apply; if necessary supervisory information cannot be obtained via direct electronic access to the security-based swap data held by a foreign trade repository or foreign regulatory authority, then such transactions must continue to be reported to a registered SDR, from which the Commission can obtain such information.

d. Trade Repository Capabilities—Rule 908(c)(2)(iii)(D)

The Commission received no comments on Rule 908(c)(2)(iii)(D) and is adopting that rule as re-proposed, with certain minor changes. Final Rule 908(c)(2)(iii)(D) provides that the Commission shall not make a substituted compliance determination with respect to regulatory reporting and public dissemination unless it finds that ''[a]ny trade repository or foreign regulatory authority in the foreign jurisdiction that receives and maintains required transaction reports of security-based swaps pursuant to the laws of that foreign jurisdiction is subject to requirements regarding data collection and maintenance; systems capacity, integrity, resiliency, availability, and security; and recordkeeping that are comparable to the requirements imposed on security-based swap data repositories *by the Commission's rules and regulations*'' (emphasis added). In the re-proposed rule, the highlighted language would have read ''. . . by §§ 240.13n–5 through 240.13n–7 of this chapter.'' Because requirements imposed on registered SDRs relating to data collection and maintenance; systems capacity, integrity, resiliency, availability, and security; and recordkeeping could be imposed by Commission rules and regulations other than or in addition to Rules 13n–5 through 13n–7 under the Exchange Act, the Commission believes that it would be more appropriate to use the broader language in the text of final Rule 908(c)(2)(iii)(D). The Commission continues to believe that, to allow substituted compliance for regulatory reporting and public dissemination with respect to a foreign jurisdiction, any entity in that foreign jurisdiction that is required to receive and maintain security-based swap transaction data must have protections and operability standards comparable to those imposed on SEC-registered SDRs.

In addition, the re-proposed rule would have required, in relevant part, that—in connection with a substituted compliance determination—the foreign trade repository or foreign regulatory authority must be subject to requirements for ''systems capacity, resiliency, and security'' that are comparable to parallel U.S. requirements. That provision in final Rule 908(c)(2)(iii)(D) now states, ''systems capacity, integrity, resiliency, availability, and security.'' The addition of ''integrity'' and ''availability'' to characterize the expected operational capability of the foreign trade repository or foreign regulatory authority is derived from a parallel change that the Commission made in adopting final Rule 13n–6 under the Exchange Act that applies to SEC-registered SDRs.[910] Because these standards apply to SEC-registered SDRs, the Commission believes that it is appropriate for Rule 908(c)(2)(iii)(D) to include them as elements necessary for a finding that a foreign trade repository or foreign regulatory authority is subject to comparable regulatory duties.

e. Memoranda of Understanding—Rule 908(c)(2)(iv)

Rule 908(c)(2)(iv), as re-proposed, would have required that, before issuing a substituted compliance order relating to regulatory reporting and public dissemination with respect to a foreign jurisdiction, the Commission shall have entered into a supervisory and enforcement memorandum of understanding (''MOU'') or other arrangement with the relevant foreign financial regulatory authority or authorities under such foreign financial regulatory system addressing oversight and supervision of the applicable security-based swap market. No commenters addressed this proposed requirement.

The Commission is adopting Rule 908(c)(2)(iv) with certain minor revisions. First, the Commission is modifying the rule to indicate that a substituted compliance determination may require the Commission to enter into more than one MOU or other arrangement with a foreign authority. Second, the Commission has modified the rule to provide that such MOUs or other arrangements would ''address[ ] supervisory and enforcement cooperation and other matters arising under the substituted compliance determination.''[911] These clarifications are designed to facilitate discussions between the Commission and relevant foreign regulators.

The Commission expects that any grant of substituted compliance would be predicated on the presence of enforcement MOUs or other arrangements that provide formal mechanisms by which the Commission can request assistance and obtain documents and information from foreign authorities regarding enforcement matters involving securities. Substituted compliance also may be expected to be predicated on the presence of supervisory MOUs or other

[909] *See also infra* Section XVI(A) (addressing the impact of foreign privacy laws on Regulation SBSR).

[910] *See* SDR Adopting Release, note 831.

[911] Rule 908(c)(2)(iv).

arrangements that provide formal mechanisms by which the Commission can request assistance and obtain non-public information from foreign authorities related to the oversight of dually regulated entities. As a result, such MOUs or other arrangements should help the Commission ensure compliance with Title VII requirements for regulatory reporting and public dissemination.

In addition, any grant of substituted compliance may be conditioned upon the Commission entering into other MOUs or arrangements that address additional matters specific to the substituted compliance determination. Such MOUs or other arrangements, among other respects, may be expected to help promote the effectiveness of substituted compliance by providing mechanisms by which the Commission may request information and/or monitor for circumstances where the foreign regime may no longer be comparable to the counterpart Title VII requirements (due, for example, to changes in the substantive legal framework of the foreign regime that are inconsistent with the understandings that underpinned the Commission's initial grant of substituted compliance). In addition, such MOUs or other arrangements may provide mechanisms by which the Commission could request information and monitor the effectiveness of the enforcement and supervision capabilities of the appropriate foreign regulator(s). More generally, such MOUs or other arrangements can provide mechanisms by which the Commission could obtain information relevant to the assessment of comparability.

f. Modification or Withdrawal of Substituted Compliance Order

Rule 908(c)(2)(v), as re-proposed, would have provided that the Commission may, on its own initiative, modify or withdraw a substituted compliance order with respect to regulatory reporting and public dissemination in a foreign jurisdiction, at any time, after appropriate notice and opportunity for comment. The Commission is adopting Rule 908(c)(2)(v) as re-proposed, without revision.

Situations can arise where it would be necessary or appropriate to modify or withdraw a substituted compliance order. A modification or withdrawal could be necessary if, after the Commission issues a substituted compliance order, the facts or understandings on which the Commission relied when issuing that order are no longer true. The Commission believes, therefore, that it is appropriate to establish a mechanism whereby it could, at any time and on its own initiative, modify or withdraw a previously issued substituted compliance order with respect to regulatory reporting and public dissemination, after appropriate notice and opportunity for comment. Having made a comparability determination, the Commission should have the ability to periodically review the determination and decide whether the substituted compliance determination should continue to apply.[912] The Commission could determine to condition a substituted compliance order on an ongoing duty to disclose relevant information. Thus, the Commission generally agrees with the commenter who argued that persons making use of substituted compliance should be responsible for informing the Commission if factors on which the Commission relied in making the determination change in any material way.[913]

Two commenters generally supported the re-proposed Rule 908(c)(2)(v) requirement for the Commission to publish for comment proposed withdrawals or modifications.[914] Several commenters also recommended that any final decision by the Commission to modify or withdraw a comparability determination should include a phase-in period to provide market participants adequate opportunity to make necessary adjustments to their compliance systems and processes.[915] The Commission generally agrees with these comments, and believes that all affected persons should have appropriate notice of the introduction, withdrawal, or modification of a substituted compliance order so as to minimize undue disruptions in the market. The Commission will address phase-in issues and timeframes on a case-by-case basis—in the relevant order that introduces, modifies, or withdraws substituted compliance—depending on the facts and circumstances of the particular situation.

6. Consideration of Regulatory Reporting and Public Dissemination in the Commission's Analysis of Substituted Compliance

When the Commission re-proposed Rule 908(c) in the Cross-Border Proposing Release, it expressed a preliminary view that regulatory reporting and public dissemination should be considered together in the Commission's analysis of whether to permit substituted compliance.[916] If the Commission were to adopt that approach, security-based swap transactions would not be eligible for substituted compliance if there were comparable foreign rules in one area but not the other. In other words, a foreign jurisdiction that has comparable rules for regulatory reporting of security-based swap transactions but not comparable rules for public dissemination of such transactions would not have been eligible for substituted compliance under Regulation SBSR.

Three commenters suggested that the Commission consider making separate substituted compliance determinations for regulatory reporting and public dissemination.[917] One of these commenters expressed the view that making separate determinations is appropriate because regulatory reporting and public dissemination serve distinct goals.[918] This commenter also argued that, due to the significant costs associated with documentation, procedures, and technological systems necessary to comply with reporting regimes, the possibility of separate substituted compliance determinations for regulatory reporting and public dissemination could substantially reduce costs for non-U.S. market participants while still achieving the Commission's important market surveillance and transparency goals.[919] One of the other commenters argued that ''[d]ifferences among jurisdictions in the timing of reporting . . . should be evaluated in light of systemic risk and market supervisory objectives, rather than policies of facilitating price discovery.'' [920] The commenter concluded, therefore, that ''[s]uch flexibility should include the potential for separate determinations regarding

[912] The Commission made a similar statement in the Cross-Border Proposing Release. *See* 78 FR 31089. Three commenters agreed with the statement. *See* AFR Letter at 12; Better Markets IV at 30; IIF Letter at 4, 7.

[913] *See* Better Markets IV at 29, 32.

[914] *See* ABA Letter at 6; ISDA II at 9.

[915] *See* FOA Letter at 5; IIF Letter at 7; SIFMA/FIA/Roundtable Letter at A–37.

[916] *See* 78 FR 31096.

[917] *See* IIB Letter at 25; ISDA II at 9; SIFMA/FIA/Roundtable Letter at A–45.

[918] *See* IIB Letter at 25 (''regulatory reporting provides the Commission with the tools for market surveillance and oversight of its regulated markets, while public dissemination is designed to provide the market, rather than regulators, real-time price transparency'').

[919] *See id.*

[920] ISDA II at 9.

regulatory reporting and public dissemination requirements.'' [921]

Notwithstanding these comments, the Commission continues to believe that—subject to one exception described below—regulatory reporting and public dissemination should be considered together for purposes of substituted compliance under Rule 908(c). Even if regulatory reporting and public dissemination serve different policy goals, the Commission believes that treating regulatory reporting and public dissemination separately would not further those goals as effectively as considering these requirements together. The Commission agrees with the commenters who argued that regulatory reporting serves important market oversight goals.[922] However, the Commission disagrees that these objectives should be pursued ''rather than policies of facilitating price discovery.'' [923] Title VII requires the Commission to pursue both sets of policy goals. If the Commission were to permit substituted compliance for regulatory reporting but not for public dissemination, certain transactions could be reported to a foreign trade repository or a foreign regulatory authority in lieu of a registered SDR but would (in theory) still be subject to the Regulation SBSR's public dissemination requirements in Rule 902. Under Regulation SBSR, registered SDRs are charged with publicly disseminating information about security-based swap transactions. To carry out its public dissemination function, a registered SDR must obtain data about security-based swap transactions that Regulation SBSR requires it to publicly disseminate. If this data were reported to a foreign trade repository or foreign regulatory authority under the terms of a substituted compliance order, it would be impractical, if not impossible, for a registered SDR to disseminate that transaction data, as required under Rule 902. In other words, because the registered SDR needs a report of the transaction from the reporting side in order to carry out public dissemination, no purpose would be served—and indeed public dissemination could be compromised—by removing the duty to report the transaction to a registered SDR in lieu of the duty to report it to the foreign trade repository or foreign regulatory authority.[924] The Commission continues to believe that it is impractical and unnecessary to devise an alternate method of public dissemination for security-based swaps that are reported in a foreign jurisdiction pursuant to a substituted compliance order. The Commission concludes, therefore, that a foreign jurisdiction's regulatory reporting and public dissemination requirements—subject to one exception described immediately below—shall be considered together for purposes of evaluating comparability for purposes of a substituted compliance determination under Rule 908(c).

One commenter argued that the Commission should be able to issue a substituted compliance order solely in respect of regulatory reporting that would apply to cross-border security-based swaps that are subject to regulatory reporting but not public dissemination under Regulation SBSR.[925] Under Rule 908(a), as adopted, there is one kind of security-based swap that is subject to regulatory reporting but not public dissemination: A transaction with a non-U.S. person that is registered as a security-based swap dealer or major security-based swap participant on one side and no U.S. person on the other side. Upon further consideration, the Commission agrees with the commenter and is adopting Rule 908(c) with certain revisions that will allow the Commission to issue a substituted compliance order with respect to regulatory reporting but not public dissemination with respect to this subset of cross-border transactions. The Commission has added a second sentence to the language in re-proposed Rule 908(c)(2)(i) to carry out this aim.[926] The Commission also revised one prong of re-proposed Rule 908(c)(iii) to exclude consideration of the reporting timeframes for public dissemination in cases where the Commission is considering a substituted compliance request with respect to cross-border transactions that are, under Regulation SBSR, subject to regulatory reporting but not public dissemination. The Commission believes that offering the possibility of substituted compliance for these kinds of cross-border transactions could reduce compliance burdens for affected persons without reducing the capability of the Commission and other relevant authorities to oversee the security-based swap market.

XVI. Other Cross-Border Issues

A. Foreign Public Sector Financial Institutions

In response to the Regulation SBSR Proposing Release, six commenters expressed concern about applying the requirements of Title VII to the activities of foreign public sector financial institutions (''FPSFIs''), such as foreign central banks and multilateral development banks.[927] One commenter, the European Central Bank (''ECB''), noted that security-based swaps entered into by the Federal Reserve Banks are excluded from the definition of ''swap'' in the Commodity Exchange Act (''CEA'') [928] and that the functions of foreign central banks and the Federal Reserve are broadly comparable. The ECB argued, therefore, that security-based swaps entered into by foreign central banks should likewise be excluded from the definition of ''swap.'' [929] A second commenter, the World Bank (representing the International Bank for Reconstruction and Development, the International Finance Corporation, and other multilateral development institutions of which the United States is a member) also argued generally that the term ''swap'' should be defined to exclude any transaction involving a multilateral development bank.[930] The World Bank further noted that EMIR—the E.U. counterpart to Title VII of the Dodd-Frank Act—would expressly exclude multilateral development banks from its coverage.[931]

The ECB and BIS stated that foreign central banks enter into security-based swaps solely in connection with their public mandates, which require them to

[921] *Id.*

[922] *Id.;* IIB Letter at 25.

[923] ISDA II at 9.

[924] The Commission specifically raised this issue in the Cross-Border Proposing Release and asked how public dissemination could be carried out if substituted compliance were in effect for regulatory reporting but not for public dissemination. *See* 78 FR 31096.

[925] *See* IIB Letter at 25 (''the separate possibility of substituted compliance for either regulatory reporting or public dissemination could substantially reduce costs for non-U.S. market participants while still achieving the Commission's important market surveillance and transparency goals'').

[926] Rule 908(c)(2)(i).

[927] *See* BIS Letter *passim;* CEB at 2, 4; ECB Letter *passim;* ECB Letter II *passim;* EIB Letter *passim;* Nordic Investment Bank Letter at 1; World Bank Letter I *passim.*

[928] Section 1a(47)(B)(ix) of the CEA, 7 U.S.C. 1a(47)(B)(ix), excludes from the definition of ''swap'' any agreement, contract, or transaction a counterparty of which is a Federal Reserve Bank, the federal government, or a federal agency that is expressly backed by the full faith and credit of the United States. A security-based swap includes any swap, as defined in the CEA, that is based on, among other things, a narrow-based index or a single security or loan. *See* Section 3(a)(68) of the Exchange Act, 15 U.S.C. 78c3(a)(68).

[929] *See* ECB Letter I at 2; ECB Letter II at 2. *See also* EIB Letter at 1; Nordic Development Bank at 1.

[930] *See* World Bank Letter I at 6–7.

[931] *See id.* at 4. *See also* EIB Letter at 7 (''As a matter of comity, actions by U.S. financial regulators should be consistent with the laws of other jurisdictions that provide exemption from national regulation for government-owned multinational developments such as the [EIB]'').

act confidentially in certain circumstances.[932] The ECB argued in particular that public disclosure of its market activities could compromise its ability to take necessary actions and ''could cause signaling effects to other market players and finally hinder the policy objectives of such actions.'' [933] Another commenter, the Council of Europe Development Banks (''CEB''), while opposing application of Title VII requirements to multilateral development banks generally, did not object to the CFTC and SEC preserving their authority over certain aspects of their transactions, such as by imposing reporting requirements.[934] Similarly, the World Bank believed that the definition of ''swap'' could be qualified by a requirement that counterparties would treat such transactions as swaps solely for reporting purposes.[935]

In the Cross-Border Proposing Release, the Commission sought additional information to assist with analysis of this issue and asked a number of questions, including questions relating to how active FPSFIs are in the security-based swap market generally; the extent to which FPSFIs engage in security-based swap activity with U.S. persons; whether there are any characteristics of FPSFI activity in the security-based swap market that could make it easier for market observers to detect an FPSFI as a counterparty or that could make it easier to detect an FPSFI's business transactions or market positions; and whether there are steps that the Commission could take to minimize such information leakage short of suppressing all FPSFI trades from public dissemination.[936] The Commission specifically requested that commenters on this issue focus on the *security-based* swap market, not the market for other swaps. In addition, commenters were requested to answer only with respect to security-based swap activity that would be subject to Regulation SBSR, and not with respect to activity that, because of other factors, would not be subject to Regulation SBSR in any case.[937]

Only a few commenters on the Cross-Border Proposing Release responded to any of these questions or offered additional comments on FPSFI issues related to Regulation SBSR. One commenter, FMS-Wertmanagement (''FMS''), an instrumentality of the government of the Federal Republic of Germany that manages certain legacy financial portfolios, stated that security-based swaps form only a small portion of its overall derivatives portfolio, and that it does not enter into any new security-based swaps ''except with the purpose of restructuring existing security-based swaps within the limits of its winding-up strategy.'' [938] This commenter, however, did not provide an opinion regarding how any provisions of Regulation SBSR would affect its operations; instead, the primary opinion expressed in the comment was that FPSFIs such as FMS should not be required to register as security-based swap dealers or major security-based swap participants and be subject to the attendant requirements.[939] Another commenter, KfW Bankengruppe (''KfW''), is also an instrumentality of the Federal Republic of Germany and engages in ''promotional lending opportunities.'' [940] KfW indicated that it has in the past engaged in a small number of security-based swap transactions but none recently.[941] Like FMS, KfW argued that FPSFIs should not be subject to regulation as security-based swap dealers or major security-based swap participants and did not otherwise comment on any issues specific to Regulation SBSR.[942] A third commenter, the World Bank, stated that, ''We do not object to reporting of our transactions by U.S. counterparties or non-U.S. counterparties that are independently required to be registered with the Commission. Our concern is limited to ensuring that non-U.S. counterparties that are otherwise not subject to regulation could become subject to certain requirements solely because a transaction with us could be deemed to be a 'Transaction conducted within the United States.' We are amenable to any solution that fixes this problem.'' [943] A fourth commenter agreed with the World Bank, arguing that the term ''transaction conducted within the United States,'' which as proposed in the Cross-Border Proposing Release would trigger the regulatory reporting requirement, should be modified to exclude transactions with FPSPIs.[944]

The Commission believes that a security-based swap to which an FPSFI is a counterparty (''FPSFI trade'') should not, on that basis alone, be exempt from regulatory reporting. By the same token, however, the Commission also believes that a security-based swap to which an FPSFI is a counterparty—even if headquartered in the United States—should not, on that basis alone, be subject to regulatory reporting. All FPSFIs, even FPSFIs that are based in the United States, are deemed non-U.S. persons under the Commission's Title VII rules.[945] As with any other security-based swap transaction having a direct counterparty that is a non-U.S. person, a transaction involving an FPSFI as a direct counterparty would be subject to Regulation SBSR's regulatory reporting requirements only if it met one of the conditions in Rule 908(a)(1). Thus, a transaction between an FPSFI and a U.S. person would be subject to regulatory reporting.[946] However, a transaction between an FPSFI and a non-U.S. person would be subject to regulatory reporting only if the non-U.S. person is a registered security-based swap dealer or a registered major security-based swap participant or is guaranteed by a U.S. person, a registered security-based swap dealer, or a registered major security-based swap participant.[947] As noted above,[948] the Commission has declined to adopt the term ''transaction conducted within the United States,'' which was proposed in the Cross-Border Proposing Release. In the Conduct Re-Proposal, the Commission anticipates soliciting additional comment on such transactions as they relate to regulatory reporting and public dissemination under Regulation SBSR.

Regulatory reporting of FPSFI trades involving, on the other side, a U.S. person, a registered security-based swap dealer, or a registered major security-based swap participant will facilitate

[932] *See* BIS Letter at 4–5; ECB Letter I at 3.

[933] ECB Letter I at 3. *See also* ECB Letter II at 2.

[934] *See* CEB Letter at 4. However, the CEB did not state a view as to whether FPSFI trades should be subject to post-trade transparency.

[935] *See* World Bank Letter I at 7.

[936] *See* 78 FR 31074.

[937] *See id.*

[938] FMS Letter at 8. *See also* IDB Letter at 1 (noting that IDB does not currently enter into security-based swaps but that it may do so in the future, and expressing concern about applying the requirements of Title VII to the activities of FPSFIs).

[939] *See id.* at 8–11.

[940] KfW Letter at 1.

[941] KfW indicated, for example, that between 2009 and 2012 it engaged in only four new trades to acquire credit protection, all in 2011; that the last time it had sold credit protection was in 2009; and that as of 2012 the outstanding notional amount of the credit protection it had purchased was zero. *See id.* at Annex A.

[942] *See id.* at 1–6.

[943] World Bank Letter at 6, note 11.

[944] *See* Sullivan Letter at 18–19.

[945] *See* Rule 3a71–3(a)(4)(iii) under the Exchange Act (specifically excluding from the term ''U.S. person'' the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies, affiliates, and pension plans, and any other similar international organizations, their agencies, affiliates, and pension plans).

[946] *See* Rule 908(a)(1) (requiring regulatory reporting of a security-based swap where there is a direct or indirect counterparty that is a U.S. person on either side of the transaction).

[947] *See* Rule 901(a)(1)(i) and (ii).

[948] *See supra* Section XV(C)(3)(iv).

the Commission's ability to carry out our regulatory oversight responsibilities with respect to registered entities, U.S. persons, and the U.S. security-based swap market more generally. The Commission notes that this approach was endorsed by the World Bank and another commenter in response to the original Regulation SBSR Proposing Release.[949]

Finally, the Commission does not believe that a sufficient basis exists to support an exemption from public dissemination for FPSFI trades. The Commission is aware of no characteristics of security-based swap transactions executed by FPSFIs that indicate that an exemption from the public dissemination requirements of Regulation SBSR would be appropriate. No commenters suggested that FPSFIs use security-based swaps differently from other market participants or that publicly disseminating FPSFI trades would provide an inaccurate view of the market. Moreover, based on the comments received, it appears that that FPSFI participation in the *security-based* swap market—rather than the swap market generally—is extremely limited.[950] Thus, if security-based swap activity consists of such a small portion of FPSFI activities, it is less apparent that an exemption is warranted; the harm that would result from disseminating security-based swap transactions—assuming such harm exists—would, all other things being equal, be less the fewer such transactions there are. The Commission notes, in any event, that Regulation SBSR contains provisions relating to public dissemination that are designed to protect the identity of security-based swap counterparties [951] and prohibit a registered SDR (with respect to uncleared security-based swaps) from disclosing the business transactions and market positions of any person.[952] The Commission also notes that, during the interim phase of Regulation SBSR, no transaction must be reported before 24 hours after execution. This approach is designed to minimize any adverse market impact of publicly disseminating any security-based swap transactions, when the Commission has not yet proposed and adopted block trades thresholds and the associated dissemination delays for the benefit of all counterparties, including FPSFIs. Given these potential protections for all security-based swap counterparties, not just FPSFIs, the Commission does not at this time see a basis to exempt FPSFI trades from public dissemination.

B. Foreign Privacy Laws Versus Duty To Report Counterparty IDs

Rule 901(d), as adopted, sets forth the data elements that must be reported to a registered SDR for regulatory purposes. One such element is the ''counterparty ID'' of each counterparty, which will enable the Commission to determine every person who is a counterparty, direct or indirect, to a security-based swap. The Commission believes that it could be necessary to assess the positions and trading activity of any counterparty in order to carry out its regulatory duties for market oversight.[953] Since only one side of the transaction is required to report, the reporting side is required to provide the counterparty ID of any counterparty on the other side.[954] Without this requirement, the registered SDR would not have a record of the identity of the other side.

Some commenters cautioned that U.S. persons might be restricted from complying with such a requirement in cases where a security-based swap is executed outside the United States.[955] One of these commenters stated, for example, that the London branch of a U.S. person would need its counterparty's consent to identify that party under U.K. law.[956] The commenter noted that, in this case, the reporting party is located in a jurisdiction where applicable local law restricts the reporting party from reporting the identity of a counterparty. The same commenter added that, in a similar transaction executed by a Paris branch of a U.S. firm, French law requires the branch to obtain the consent of the counterparty every time that it wants to report that counterparty's identity.[957] Another of these commenters urged the Commission to ''consider carefully and provide for consistency with, foreign privacy laws, some of which carry criminal penalties for wrongful disclosure of information,'' [958] but did not provide further detail. A third commenter argued, without further explanation, that allowing substituted compliance when both parties are not domiciled in the United States could avoid problems with foreign privacy laws conflicting with U.S. reporting requirements.[959]

In the Cross-Border Proposing Release, the Commission stated that it sought to understand more precisely if—and, if so, how—requiring a party to report the transaction pursuant to Regulation SBSR (including disclosure of the other side's identity to a registered SDR) might cause it to violate local law in a foreign jurisdiction where it operates. Before determining whether any exception to reporting the counterparty's counterparty ID might be necessary or appropriate, the

[949] *See* CEB Letter at 4; World Bank Letter I at 7 (stating that, although swaps involving FPSFIs as counterparties generally should be exempt from the definition of ''swap,'' they should be treated as swaps solely for reporting purposes).

[950] *See* BIS Letter at 3 (stating that the BIS generally does not transact security-based swaps such as credit default swaps or equity derivatives); KfW Letter at Annex A; FMS Letter at 8.

[951] *See* Rule 902(c)(1) (requiring a registered SDR not to disseminate the identity of any counterparty to a security-based swap).

[952] *See* Rule 902(c)(2).

[953] The Commission and other relevant authorities have a strong interest in being able to monitor the risk exposures of U.S. persons, particularly those involved in the security-based swap market, as the failure or financial distress of a U.S. person could impact other U.S. persons and the U.S. economy as a whole. The Commission and other relevant authorities also have an interest in obtaining information about non-U.S. counterparties that enter into security-based swaps with U.S. persons, because the ability of such non-U.S. counterparties to perform their obligations under those security-based swaps could impact the financial soundness of U.S. persons. *See, e.g.,* S. Comm. on Banking, Hous., & Urban Affairs, The Restoring American Financial Stability Act of 2010, S. Rep. No. 111–176, at 32 (''As a key element of reducing systemic risk and protecting taxpayers in the future, protections must include comprehensive regulation and rules for how the OTC derivatives market operates. Increasing the use of central clearinghouses, exchanges, appropriate margining, capital requirements, and *reporting* will provide safeguards for American taxpayers and the financial system as a whole'') (emphasis added).

[954] However, as described above in Section II(C)(3)(b), the reporting side might not know the counterparty ID of a counterparty by the time it must report the transaction (*e.g.,* if the trade is to be allocated to a series of funds, and the fund manager has not yet determined the allocation). In such case, the reporting side would know the identity of the execution agent acting for the funds and thus would be required to report the execution agent ID instead of the counterparty ID with the initial transaction report.

[955] *See* DTCC Letter II at 21; ISDA/SIFMA Letter I at 20. In addition, two comments on the Commission's interim final temporary rule on the reporting of security-based swaps entered into before July 21, 2010, Securities Exchange Act Release No. 63094 (October 13, 2010), 75 FR 64643 (October 20, 2010), made similar points. *See* Deutsche Bank Letter at 5 (''In some cases, dissemination or disclosure of [counterparty] information could lead to severe civil or criminal penalties for those required to submit information to an SDR pursuant to the Interim Final Rules. These concerns are particularly pronounced because of the expectation that Reportable Swap data will be reported, on a counterparty identifying basis, to SDRs, which will be non-governmental entities, and not directly to the Commissions''); ISDA I at 6 (''In many cases, counterparties to cross-border security-based swap transactions will face significant legal and reputational obstacles to the reporting of such information. Indeed, disclosure of such information may lead to civil penalties in some jurisdictions and even criminal sanctions in other jurisdictions'').

[956] *See* DTCC Letter II at 21.

[957] *See id.*

[958] ISDA/SIFMA Letter I at 20.

[959] *See* Cleary II at 17–18.

Commission sought additional information about any such foreign privacy laws and asked a number of questions about this issue.[960]

In response to the questions, one commenter listed specific provisions in foreign laws that would prevent the reporting side from identifying its foreign counterparty.[961] Another commenter noted that reporting parties could face issues with identifying the counterparty if ''either (i) consent is required for disclosing trade data to the Commission and such consent has not or cannot be obtained or (ii) a counterparty consent is not sufficient to overcome the data privacy restrictions.'' [962] This commenter requested that the Commission ''recognize in [Regulation SBSR] the necessity for reporting parties to redact/mask counterparty-identifying information'' if they reasonably believe that disclosure of such information may violate the laws of another jurisdiction.[963] Commenters did not suggest any rule text for a possible exemption from proposed Rule 901(d)(1)(i) or discuss the effects of granting substituted compliance on avoiding foreign legal barriers to reporting.

Based on the comment received as well as other sources consulted,[964] the Commission understands that some laws and regulations exist in foreign jurisdictions that may limit or prevent reporting of counterparty ID to an SEC-registered SDR pursuant to Regulation SBSR. These types of restrictions may include privacy laws, which generally restrict disclosure of certain identifying information about a natural person or entity,[965] and so-called ''blocking statutes'' (including secrecy laws) which typically prevent the disclosure of information relating to third parties and/or foreign governments.[966] Several jurisdictions with possible legal and regulatory barriers also have reported that they are in the process of modifying their legislation and regulations to remove such barriers.[967] Therefore, it is difficult for the Commission to assess the extent to which legal and regulatory barriers will continue to exist that would hinder the ability of parties to meet the reporting requirement of Regulation SBSR.

The Commission recognizes that security-based swap counterparties that will incur the duty to report pre-enactment and transactional security-based swaps pursuant to Rule 901(i) may have entered into some of those transactions with counterparties in jurisdictions that have privacy laws or blocking statutes that may prohibit these reporting sides from disclosing the identities of these foreign counterparties. At the time that these transactions were executed, there was no regulatory requirement to report the identity of the counterparty under the United States securities laws. Therefore, the Commission believes that it would be inappropriate to compel a reporting side to disclose the identity of a counterparty to a historical security-based swap now, if such disclosure would violate applicable foreign law and the reporting side could not reasonably have foreseen a future conflict with applicable U.S. law. The Commission will consider requests from reporting sides for exemptions, pursuant to Section 36 of the Exchange Act,[968] from the requirement to report counterparty IDs of historical security-based swaps executed up to the last day before the effective date of these final rules. Any such request should be filed pursuant to Rule 0–12 under the Exchange Act [969] and include: (1) The name of the jurisdiction or jurisdictions which the requester believes prohibit it from being able to carry out the duty under Rule 901(i) of reporting the identity of a counterparty; and (2) a discussion of the laws of the jurisdiction or jurisdictions that prohibit such reporting, and why compliance with the duty to report the counterparty ID under Rule 901(i) is limited or prohibited.[970] Upon the effective date of these final rules, every security-based swap counterparty that is the reporting side for one or more security-based swaps will eventually have to report, among other things, the identity of each of its counterparties.[971]

C. Antifraud Authority

The provisions of Regulation SBSR and the interpretive guidance discussed above relate solely to the applicability of the security-based swap regulatory reporting and public dissemination requirements under Title VII. Regulation SBSR does not limit the cross-border reach of the antifraud provisions or other provisions of the federal securities laws that are not addressed by this release.[972]

In Section 929P(b) of the Dodd-Frank Act,[973] Congress added provisions to the federal securities laws confirming the Commission's broad cross-border antifraud authority.

In the Cross-Border Adopting Release, the Commission adopted Rule 250.1

[960] *See* 78 FR 31073.

[961] *See* IIB Letter at 19, note 45.

[962] ISDA IV at 19.

[963] *Id.*

[964] *See* letter from Robert Pickel, Chief Executive Officer, ISDA, to David A. Stawick, Secretary, CFTC, dated August 27, 2012 (''ISDA CFTC Letter''), *passim,* available at *www2.isda.org/attachment/NjY2NQ==/Comment%20Letter%20-%20CFTC%20Reporting%20Obligations%20Cross%20Border%20FINAL%20082712.pdf* (last visited January 13, 2015) (discussing a survey of privacy laws in a number of foreign jurisdictions); FSB OTC Derivatives Working Group (ODWG), OTC Derivatives Market Reforms: Fifth Progress Report on Implementation (April 15, 2013); Seventh Progress Report on Implementation (April 8, 2014); OTC Derivatives Regulators Group (ODRG), Report on Agreed Understandings to Resolving Cross-Border Conflicts, Inconsistencies, Gaps And Duplicative Requirements (August 2013); ODRG, Report on Cross-Border Implementation Issues (September 2013).

[965] The Commission understands that the privacy law limitations on disclosure of certain identifying information related to natural persons or entities can usually (but not always) be overcome by counterparty consent to such disclosure. Even where express consent resolves any outstanding privacy law issues, obtaining consent from the necessary counterparties may require market education and additional time to implement. *See* ISDA CFTC Letter at 8.

[966] The Commission understands that blocking statue barriers to reporting normally cannot be waived by the person or entity that is the subject of the information, though the person or entity may, in some circumstances, apply for an exemption to report certain information. *See id.*

[967] *See* ODWG Seventh Progress Report, *supra* note 965, at 10.

[968] 15 U.S.C. 78mm.

[969] 17 CFR 240.0–12.

[970] For example, to support an exemption request, the requester should consider discussing whether obtaining waivers from its counterparties is an acceptable practice under the law of the foreign jurisdiction.

[971] The rules adopted in this release will be effective 60 days after publication in the **Federal Register**. For Rules 900, 907, and 909, the compliance date is the same as the effective date. The Commission is proposing a new compliance schedule for Rules 901, 902, 903, 904, 905, 906, and 908 of Regulation SBSR. *See* Regulation SBSR Proposed Amendments Release, Section VII. Market participants will not have to comply with the requirements in those rules—such as the requirement in Rule 901(i) to report historical security-based swaps—until certain dates that will be specified when the Commission takes final action on the proposed compliance schedule.

[972] For example, security-based swaps, as securities, are subject to the provisions of the Securities Act and the rules and regulations thereunder applicable to securities. The Securities Act requires that any offer and sale of a security must either be registered under the Securities Act, *see* Section 5 of the Securities Act, 15 U.S.C. 77e, or made pursuant to an exemption from registration, *see, e.g.,* Sections 3 and 4 of the Securities Act, 15 U.S.C. 77c and 77d. In addition, the Securities Act requires that any offer to sell, offer to buy or purchase, or sale of a security-based swap to any person who is not an eligible contract participant must be registered under the Securities Act. *See* Section 5(e) of the Securities Act, 15 U.S.C. 77e(e). Because of the statutory language of Section 5(e), exemptions from this requirement in Sections 3 and 4 of the Securities Act are not available.

[973] The antifraud provisions of the securities laws include Section 17(a) of the Securities Act, 15 U.S.C. 77q(a); Sections 9, 10(b), 14(e), and 15(c)(1)–(2) and (7) of the Exchange Act, 15 U.S.C. 78i, 78j, 78n, 78o(c)(1)–(2); Section 206 of the Investment Advisers Act of 1940, 15 U.S.C. 80b–6; and any rule or regulation of the Commission promulgated under these statutory provisions.

under the Exchange Act,[974] which sets forth the Commission's interpretation of its cross-border authority.[975] Rule 250.1(a) provides that the antifraud provisions of the securities laws apply to: ''(1) Conduct within the United States that constitutes significant steps in furtherance of the violation; or (2) Conduct occurring outside the United States that has a foreseeable substantial effect within the United States.'' Nothing in this Regulation SBSR limits the broad cross-border application of the anti-fraud provisions as set forth in Rule 250.1.

D. International Coordination Generally

Several commenters urged the Commission to coordinate their efforts to implement Title VII requirements with those of foreign regulators who also are imposing new requirements on the OTC derivatives markets.[976] For example, one commenter urged the SEC and CFTC ''to harmonize their real-time reporting regimes with each other and with those of comparable international regulators.'' [977] Similarly, a second commenter stated that the SEC and CFTC ''should work with foreign regulators that plan to create their own real-time reporting regimes to harmonize their requirements regarding the timing of dissemination and the data to be disseminated.'' [978] The same commenter urged the SEC and CFTC ''to continue their efforts in establishing a globally harmonized approach to creating [LEIs].'' [979] Other commenters believed generally that global coordination is necessary to develop LEIs and other identification codes.[980]

The Commission agrees broadly with these commenters that international coordination will be helpful in developing robust and efficient regimes for regulating cross-border security-based swap activity and overseeing the security-based swap market. The Commission is cognizant of its duty under Section 752(a) of the Dodd-Frank Act [981] and remains committed to engaging in bilateral and multilateral discussions with foreign regulatory authorities to carry out this goal. The Commission staff has consulted and coordinated with the CFTC, prudential regulators,[982] and foreign regulatory authorities consistent with the consultation provisions of the Dodd-Frank Act,[983] and more generally as part of its domestic and international coordination efforts. The Commission staff has participated in numerous bilateral and multilateral discussions with foreign regulatory authorities addressing the regulation of OTC derivatives.[984] Through these discussions and the Commission's participation in various international task forces and working groups, it has gathered information about foreign regulatory reform efforts and discussed the possibility of conflicts and gaps, as well as inconsistencies and duplications, between U.S. and foreign regulatory regimes. The Commission has taken and will continue to take these discussions into consideration in developing rules, forms, and interpretations for implementing Title VII of the Dodd-Frank Act.

XVII. Rule 909—SIP Registration

Section 3(a)(22)(A) of the Exchange Act [985] defines a SIP as ''any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations.'' Security-based swaps are securities under the Exchange Act.[986] Because Regulation SBSR requires registered SDRs to collect security-based swap transaction reports from participants and to distribute data from such reports, registered SDRs will be SIPs for purposes of the Exchange Act.

Section 11A(c)(1) of the Exchange Act [987] provides that the Commission may prescribe rules requiring SIPs to, among other things, assure ''the fairness and usefulness of the form and content'' [988] of the information that they disseminate, and to assure that ''all other persons may obtain on terms which are not unreasonably discriminatory'' the transaction information published or distributed by SIPs.[989] Section 11A(c)(1) applies regardless of whether a SIP is registered with the Commission as such.

The provisions of Section 11A(b)(5) and11A(b)(6) of the Exchange Act, however, apply only to registered SIPs. Requiring a registered SDR to register with the Commission as a SIP would subject that entity to Section 11A(b)(5) of the Exchange Act,[990] which requires a registered SIP to notify the Commission whenever it prohibits or limits any person's access to its services. Upon its own motion or upon application by any aggrieved person, the Commission could review the registered SIP's action.[991] If the Commission finds that the person has been discriminated

[974] 17 CFR 250.1.

[975] *See* Cross-Border Adopting Release, 79 FR 47360.

[976] *See, e.g.,* Cleary III at 36; Markit III at 2; SIFMA I at 5–6; WMBAA III at 3 (''U.S. regulations also need to be in harmony with regulations of foreign jurisdictions''); NGFP Letter at 1–2; AFGI Letter at 1 (urging the Commission to ensure the consistent regulation of financial guaranty insurers); CDEU Letter at 2; PensionsEurope Letter at 1–2 (urging the Commission to avoid conflicts with European regulatory requirements); Barnard II at 1–2; Six Associations Letter at 1–2 (expressing general support for coordination among regulators with respect to the regulation of swaps and security-based swaps); CCMR II, *passim.*

[977] SIFMA I at 5–6.

[978] Markit III at 2.

[979] *Id.* at 4–5.

[980] *See* Benchmark at 1; Bloomberg Letter at 1; DTCC V at 14.

[981] 15 U.S.C. 8325 (''In order to promote effective and consistent global regulation of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the prudential regulators . . . as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps'').

[982] The term ''prudential regulator'' is defined in Section 1a(39) of the CEA, 7 U.S.C. 1a(39), and that definition is incorporated by reference in Section 3(a)(74) of the Exchange Act, 15 U.S.C. 78c(a)(74).

[983] Section 712(a)(2) of the Dodd-Frank Act provides in part that the Commission shall ''consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.''

[984] Senior representatives of OTC derivatives market regulators from G20 jurisdictions have met on a number of occasions to discuss international coordination of OTC derivatives regulations, including as part of the OTC Derivatives Regulators Group. *See, e.g.,* Report of the OTC Derivatives Regulators Group on Cross-Border Implementation Issues (March 2014), available at *https://www.g20.org/sites/default/files/g20_resources/library/Report%20of%20the%20OTC%20Derivatives%20Regulators%20Group%20on%20Cross-Border%20Implementation%20Issues.pdf*; Joint Press Statement of Leaders on Operating Principles and Areas of Exploration in the Regulation of the Cross-Border OTC Derivatives Market (December 4, 2012), available at *http://www.sec.gov/news/press/2012/2012-251.htm*; Joint Statement on Regulation of OTC Derivatives Markets (May 7, 2012), available at: *http://www.sec.gov/news/press/2012/2012-85.htm*; Joint Statement on Regulation of OTC Derivatives Markets (December 9, 2011), available at: *http://www.sec.gov/news/press/2011/2011-260.htm*, each last visited September 22, 2014. The Commission participates in the FSB's Working Group on OTC Derivatives Regulation (''ODWG''), both on its own behalf and as the representative of the International Organization of Securities Commissions (''IOSCO''), which is co-chair of the ODWG. The Commission also serves as one of the co-chairs of the IOSCO Task Force on OTC Derivatives Regulation.

[985] 15 U.S.C. 78c(a)(22)(A).

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

[987] 15 U.S.C. 78k–1(c)(1).

[988] 15 U.S.C. 78k–1(c)(1)(B).

[989] 15 U.S.C. 78k–1(c)(1)(D).

[990] 15 U.S.C. 78k–1(b)(5).

[991] *See* 15 U.S.C. 78k–1(b)(5)(A)

against unfairly, it could require the SIP to provide access to that person.[992] Section 11A(b)(6) of the Exchange Act also authorizes the Commission to take certain regulatory action as may be necessary or appropriate against a registered SIP.[993]

Section 11A(b)(1) of the Exchange Act[994] provides that a SIP not acting as the ''exclusive processor''[995] of any information with respect to quotations for or transactions in securities is exempt from the requirement to register with the Commission as a SIP unless the Commission, by rule or order, determines that the registration of such SIP ''is necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of [Section 11A].'' An SDR does not engage on an exclusive basis on behalf of any national securities exchange or registered securities association in collecting, processing, or preparing for distribution or publication any information with respect to transactions or quotations in securities; therefore, an SDR does not fall under the statutory definition of ''exclusive processor.''

To subject an SDR to the requirements of Sections 11A(b)(5) and 11A(b)(6), the Commission would need, by rule or order, to make the determination under Section 11A(b)(1) noted above. Accordingly, the Commission proposed Rule 909 to require a registered SDR also to register with the Commission as a SIP on existing Form SIP. The Commission requested comment on this proposed requirement, and whether it should combine Form SIP and Form SDR to create a joint registration form. In the Cross-Border Proposing Release, the Commission re-proposed Rule 909 without revision.

The Commission believes that requiring registered SDRs to register as SIPs will help to ensure fair access to important security-based swap transaction data reported to and publicly disseminated by them. The Commission believes that the additional authority over a registered SDR/SIP provided by Sections 11A(b)(5) and 11A(b)(6) of the Exchange Act will ensure that these entities offer security-based swap market data on terms that are fair and reasonable and not unreasonably discriminatory. Therefore, the Commission believes that registering SDRs as SIPs is necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of Section 11A of the Exchange Act. Section 11A of the Exchange Act establishes broad goals for the development of the securities markets and charges the Commission with establishing rules and policies that are designed to further these objectives. Section 11A(a) states, among other things, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions; the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities; and an opportunity for investors' orders to be executed without the participation of a dealer. Requiring registered SDRs also to register with the Commission as SIPs is designed to help achieve these objectives in the still-developing security-based swap market.

One commenter stated that, because of the duplicative nature of the information required by Form SDR and Form SIP, the Commission should combine the two forms so that an SDR could register as both an SDR and a SIP using only one form.[996] As an alternative, the commenter suggested that an SDR be permitted to use either Form SDR or Form SIP to register as both an SDR and a SIP.[997]

Rule 909, as re-proposed, stated that ''[a] registered security-based swap data repository shall also register with the Commission as a securities information processor on Form SIP.'' For reasons discussed in the SDR Adopting Release, the Commission agrees that Form SDR should be revised to accommodate SIP registration.[998] Accordingly, Rule 909, as adopted, eliminates the reference to Form SIP and states instead that ''[a] registered security-based swap data repository shall also register with the Commission as a securities information processor on Form SDR.'' There are no filing requirements in addition to the Form SDR for a person to register as both a SIP and an SDR.

XVIII. Constitutional Questions About Reporting and Public Dissemination

One commenter argued that the reporting and dissemination requirements of Regulation SBSR could violate the First and Fifth Amendments to the Constitution by compelling ''non-commercial speech'' without satisfying a strict scrutiny standard and by ''taking'' transaction and/or holding data without just compensation.[999]

As a preliminary matter, the Commission presumes ''that Congress acted constitutionally when it passed the statute.''[1000] Furthermore, the Commission has carefully considered the commenter's arguments and pertinent judicial precedent, and believes that the commenter does not raise any issue that would preclude the Commission's adoption of Regulation SBSR's regulatory reporting and public dissemination requirements substantially as proposed and re-proposed. The Commission does not believe that the public dissemination requirements of Regulation SBSR violate the First Amendment. Under the federal securities laws, the Commission imposes a number of requirements that compel the provision of information to the Commission itself or to the public. The Supreme Court has suggested that only limited scrutiny under the First Amendment applies to securities regulation, and that the government permissibly regulates ''public expression by issuers of and dealers in

[992] *See* 15 U.S.C. 78k–1(b)(5)(B).

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

[994] 15 U.S.C. 78k–1(b)(1).

[995] 15 U.S.C. 78c(a)(22)(B) (defining ''exclusive processor'' as any securities information processor or self-regulatory organization which, directly or indirectly, engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication any information with respect to (1) transactions or quotations on or effected or made by means of any facility of such exchange or (2) quotations distributed or published by means of any electronic system operated or controlled by such association).

[996] *See* DTCC III at 9.

[997] *See id.*

[998] *See* SDR Adopting Release, Section VI(A)(1)(c). Form SDR is being adopted by the Commission as part of the SDR Adopting Release. Form SDR will be used by SIPs that also register as SDRs. Form SIP will continue to be used by applicants for registration as SIPs not seeking to become dually registered as an SDR and a SIP, and for amendments by registered SIPs that are not dually registered as an SDR and a SIP.

[999] *See* Viola Letter at 3–4.

[1000] See *Nebraska* v. *EPA,* 331 F.3d 995, 997 (D.C. Cir. 2003) (''Agencies do not ordinarily have jurisdiction to pass on the constitutionality of federal statutes.'') (citing *Thunder Basin Coal Co.* v. *Reich,* 510 U.S. 200, 215 (1994)); *Todd* v. *SEC,* 137 F.2d 475, 478 (6th Cir. 1943) (same); *William J. Haberman,* 53 SEC 1024, 1029 note 14 (1998) (''[W]e have no power to invalidate the very statutes that Congress has directed us to enforce.'') (citing *Milton J. Wallace,* 45 SEC 694, 697 (1975); *Walston & Co.,* 5 SEC 112, 113 (1939)).

securities.'' [1001] And in other contexts, the required disclosure of purely factual and uncontroversial information has also been subjected to only limited First Amendment scrutiny.[1002]

Nor does the Commission believe that public dissemination requirements of Regulation SBSR violate the Fifth Amendment. To constitute a regulatory taking, the government action must (1) affect a property interest, and (2) go ''too far'' in so doing.[1003] The Supreme Court has identified several factors to be considered in determining whether the government action goes too far, such as ''the character of the governmental action, its economic impact, and its interference with reasonable investment-backed expectations.'' [1004] The requirements at issue here directly advance the government's legitimate interest in enhancing price discovery by, among other things, reducing information asymmetries, enhancing transparency, and improving confidence in the market. The character of the government action, therefore, weighs against Rule 902(a) being a taking. The Commission further believes that the regulatory reporting and public dissemination requirements of Regulation SBSR do not impose an unconstitutional economic impact [1005] or interfere with reasonable investment-backed expectations. Regulation SBSR does not interfere with market participants' reasonable investment-backed expectations because the financial markets are an industry with a long tradition of regulation focused on promoting disclosure of information to investors. Businesses that operate in an industry with a history of regulation have no reasonable expectation that regulation will not be strengthened to achieve established legislative ends.[1006] Although security-based swaps did not become securities and thus did not become fully subject to the regulatory regime for securities regulation until after passage of the Dodd-Frank Act, the Commission believes that the economic similarity of markets in securities and security-based swaps strongly suggests that market participants could have anticipated regulation at a future date. Furthermore, the Commission believes that the commenter has provided no argument to support the proposition that the mere fact that security-based swaps were not fully subject to the Exchange Act until passage of the Dodd-Frank Act necessarily implies that it was unconstitutional for Congress to amend the Exchange Act to cover these securities.

XIX. What happens if there are multiple SDRs?

The provisions of Title VII that amended the Exchange Act to require the registration of security-based swap data repositories do not require that there be only a single SDR; in fact, these provisions contemplate that there could be multiple SDRs registered with the Commission.[1007] Therefore, no provision of Regulation SBSR, as adopted, is designed to require or promote the use of only a single SDR. The Commission believes, however, that it must consider how the Title VII goals of monitoring and reducing systemic risk and promoting transparency in the security-based swap market will be achieved if there are multiple registered SDRs.

One commenter believed that a diverse range of options for reporting security-based swap data would benefit the market and market participants.[1008] However, other commenters raised various concerns with having multiple registered SDRs. Two commenters recommended that the Commission designate a single registered SDR per asset class.[1009] Similarly, a third commenter stated that ''the Commission should consider designating one [registered SDR] per SBS asset class to act as the industry consolidator of SBS data for the Commission and for the purpose of public reporting.'' [1010] This commenter also recommended that all life cycle events be reported to the same registered SDR that received the original transaction report and that registered SDRs be required to accept all security-based swaps in an asset class to further reduce fragmentation of data across multiple SDRs.

Another commenter warned of the risks of security-based swaps being reported to multiple SDRs, stating that, ''[u]nless data fragmentation can be avoided, the primary lessons of the 2008 financial crisis, as related to OTC derivatives trading, will not have been realistically or adequately taken into account.'' [1011] This commenter noted the ''large one-way trades put on by AIG in mortgage related credit derivatives'' and stated that ''if AIG had chosen to try to hide [its] trades by reporting to multiple repositories, these systemically risky positions would not have been discovered absent a 'super repository' that aggregated the trade level data of the various reporting repositories in a manner as to detect the large one-way aggregate positions.'' [1012] The same commenter stated in a subsequent comment letter that, if there are multiple registered SDRs, the ''Commission should take such action as is necessary to eliminate any overstatements of open interest or other inaccuracies that may result from having broader market data published from separate SDRs.'' [1013] One option suggested by this commenter was utilizing Section 13(n)(5)(D)(i) of the Exchange Act,[1014] which requires an

[1001] *See, e.g., Paris Adult Theatre I* v. *Slaton,* 413 U.S. 49, 64 (1973) (stating also that the First Amendment does not ''preclude[ ] States from having 'blue sky' laws to regulate what sellers of securities may write or publish . . . ''). *See also SEC* v. *Wall St. Pub. Inst., Inc.,* 851 F.2d 365, 373 (D.C. Cir. 1988) (''Speech relating to the purchase and sale of securities . . . forms a distinct category of communications'' in which ''the government's power to regulate [speech about securities] is at least as broad as with respect to the general rubric of commercial speech'').

[1002] *See, e.g., Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.,* 547 U.S. 47, 61–62 (2006); *Am. Meat Inst.* v. *U.S. Dep't of Agric.,* 760 F.3d 18, 21–22 (D.C. Cir. 2014); *N.Y. State Rest. Ass'n* v. *N.Y. City Bd. of Health,* 556 F.3d 114, 132 (2d Cir. 2009) (citing *Nat'l Elec. Mfrs. Ass'n* v. *Sorrell,* 272 F.3d 104, 113–115 (2d Cir. 2001)).

[1003] *See Ruckleshaus* v. *Monsanto Co.,* 467 U.S. 986, 1000–01, 1005 (1984).

[1004] *Id.* at 1005 (quoting *PruneYard Shopping Center* v. *Robins,* 447 U.S. 74, 83 (1980)).

[1005] *See District Intown Properties Ltd. P'ship* v. *District of Columbia,* 198 F.3d 874, 883 (D.C. Cir. 1999) (requiring a Fifth Amendment claim to ''put forth striking evidence of economic effects'').

[1006] *District Intown Properties Ltd. P'ship* v. *District of Columbia,* 198 F.3d 874, 884 (D.C. Cir. 1999); *see also Ruckelshaus* v. *Monsanto Co.,* 467 U.S. 986, 1008–09 (1984) (finding no reasonable investment-backed expectations because ''the possibility was substantial'' in an industry long ''the focus of great public concern and significant government regulation'' that Congress ''would find disclosure to be in the public interest''); *Maine Educ. Ass'n Benefits Trust* v. *Cioppa,* 695 F.3d 154–156 (1st Cir. 2012) (finding no reasonable investment-backed expectations because the Maine legislature's ''continued expansion of this right of access'' to information about insurance plans to a type of plan not covered by previous statutes providing a right of access was ''reasonably foreseeable'' in light of ''the historically heavy and continuous regulation of insurance in Maine'').

[1007] *See* Section 13(n) of the Exchange Act, 15 U.S.C. 78m.

[1008] *See* MFA Letter at 6.

[1009] *See* ISDA I at 4; ISDA/SIFMA I at 9, note 12 (noting that, with a single SDR, there would be no redundancy of platforms, no need for additional levels of data aggregation for each asset class, reduced risk of errors, and greater transparency).

[1010] MarkitSERV I at 8. The commenter also urged the Commission to ''ensure that there is consistency between the fields that different SBS SDRs in the same asset class would collect and report in order to lay the foundation for the data to be consolidatable.'' *Id. See also* DTCC IX at 3. *See supra* Section II(B)(2) for discussion of the Commission's approach to ensure consistency. Another commenter also noted that ''if there is more than one registered SDR for an asset class, it may prove difficult for the Commission to ensure that all registered SDRs calculate the same block thresholds for the same SBS instruments.'' WMBAA II at 4. As discussed in more detail above in Section VII, the Commission is not yet adopting or proposing block trade rules.

[1011] *See* DTCC II at 15.

[1012] *Id.*

[1013] DTCC IV at 5.

[1014] 15 U.S.C. 78m(n)(5)(D)(i).

SDR to ''provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity).'' The commenter explained that, using this authority, ''the Commission could designate one [SDR] as the recipient of information from other [SDRs] in order to have consolidation and direct electronic access for the Commission.'' [1015]

Four commenters urged the Commission to mandate the consolidation of publicly disseminated security-based swap data.[1016] One of these commenters stated that ''in order to most effectively increase transparency in the swaps markets, it will be important for the real-time swaps data to be available on a consolidated basis.'' [1017] The second commenter believed that a central consolidator or the Commission must have the authority to compel all participants, including registered SDRs, to submit data to assure that there is a single, comprehensive, and accurate source for security-based swap data.[1018] A third commenter, citing the regime for producing consolidated public information in the U.S. equity markets, stated that ''there is no obvious reason why a similar regime could not succeed for security-based swaps.'' [1019] In addition, this commenter believed that ''the ideal approach would be collaboration by the SEC and the CFTC to create (or facilitate the direct creation of) a single, central system that performs these data dissemination functions.'' [1020] The fourth commenter cautioned that the failure to make real-time data available on a consolidated basis would especially disadvantage less frequent and smaller users of the transaction data, who would not be able to obtain an accurate view of market activity because of the cost and complexity of accessing multiple data sources.[1021]

The Commission shares the concerns of these commenters. The regulatory goals underpinning the Title VII requirements for regulatory reporting and public dissemination of security-based swap transaction information could be frustrated if the information cannot be easily aggregated and normalized. The Commission notes, however, that the statutory provisions allow for the possibility of multiple SDRs.[1022] The Commission therefore seeks to develop a regulatory framework that would accommodate multiple SDRs, but mitigates the undesirable fragmentation of regulatory data that would come from incompatible data standards.

At the same time, the Commission generally agrees with the commenter who stated that the ''Commission should take such action as is necessary to eliminate any overstatements of open interest or other inaccuracies that may result from having broader market data published from separate SDRs.'' [1023] The requirement that all life cycle events must be reported to the same registered SDR that received the report of the initial transaction is designed to minimize some potential problems of having multiple registered SDRs, such as overstating open interest. Although the reporting side can choose the registered SDR to which to report the initial transaction, all subsequent life cycle events must then be reported to that registered SDR. The Commission believes that this requirement will facilitate its ability to track security-based swaps over their duration and minimize instances of double counting the same economic activity, which could occur if the records of life cycle event reports did not indicate their relationship to earlier occurring transactions.[1024]

Similarly, the Commission is adopting Rules 902(c)(4) and 907(a)(4) to address potential issues arising from non-mandatory reports (which could include duplicate reports of transactions reported to a second SDR when a mandatory report has already been provided to a first SDR). Rule 902(c)(4) prohibits a registered SDR from publicly disseminating a report of a non-mandatory transaction; this requirement is designed to prevent market observers from over-estimating the true amount of market activity, which could occur if the same transaction was disseminated by two SDRs. Rule 907(a)(4) requires registered SDRs to establish and maintain policies and procedures, among other things, for how participants must identify non-mandatory reports to the SDR, so that the SDR will be able to avoid publicly disseminating them.

The Commission believes that problems associated with the existence of multiple registered SDRs can be minimized to the extent that such SDRs refer to the same persons or things in the same manner. Thus, final Rule 903 provides that, if an IRSS that meets certain criteria is recognized by the Commission and has assigned a UIC to a person, unit of a person, or product, all registered SDRs must use that UIC in carrying out their responsibilities under Regulation SBSR. As discussed in Section X(B)(2), *supra,* the Commission has recognized the GLEIS—through which LEIs can be obtained—as an IRSS that meets the criteria of Rule 903. Therefore, if an entity has an LEI issued by or through the GLEIS, that LEI must be used for all purposes under Regulation SBSR. Furthermore, Rule 903(a)—in connection with the Commission's recognition of the GLEIS—requires all persons who are participants of at least one registered SDR to obtain an LEI from or through the GLEIS for use under Regulation SBSR, and each participant that acts as a guarantor of a direct counterparty's performance of any obligation under a security-based swap that is subject to Rule 908(a) shall, if the direct counterparty has not already done so, obtain a UIC for identifying the direct counterparty from or through that system, if that system permits third-party registration without a requirement to obtain prior permission of the direct counterparty.

The Commission is particularly hopeful that a robust system for product IDs could greatly improve the usability of security-based swap data, both for regulators and for market observers that obtain publicly disseminated transaction information. The product ID could minimize administrative burdens by rendering unnecessary the separate reporting of several data elements. Product IDs also should more easily distinguish standardized from non-standardized products and, thus, should

[1015] DTCC I at 7.

[1016] *See* Barnard I at 3; Better Markets II at 6; FINRA Letter at 5; MarkitSERV I at 7.

[1017] MarkitSERV I at 7.

[1018] *See* FINRA Letter at 5 (also noting that mandating the consolidation of security-based swap transaction data would help to assure uniformity, thereby promoting market integrity and investor protection).

[1019] Better Markets II at 6. However, the commenter cautioned that the security-based swap data dissemination regime must avoid the direct data feeds that have developed in the equity markets because these data feeds allow ''high-frequency traders to bypass the aggregation and dissemination procedure, at the expense of retail and other investors.'' *Id.*

[1020] *Id.* at 4.

[1021] *See* MarkitSERV I at 7–8.

[1022] In the Regulation SBSR Proposing Release, the Commission stated that requiring registered SDRs to be the registered entities with the duty to disseminate security-based swap transaction information—rather than, for example, SB SEFs, clearing agencies, or the counterparties themselves—would produce some degree of mandated consolidation of that information and help to provide consistency in the form of the reported information. *See* 75 FR 75227. However, the Commission acknowledges that this approach cannot guarantee consolidation of the published data because of the possibility of multiple registered SDRs.

[1023] DTCC IV at 5.

[1024] Thus, the Commission concurs with the commenter who recommended that all life cycle events be reported to the same registered SDR that received the original transaction report. *See* MarkitSERV I at 8.

facilitate aggregation of the public feeds issued from different registered SDRs.

The Commission did not propose to take any specific actions towards consolidation of the security-based swap data disseminated by different registered SDRs. As the Commission stated in the Regulation SBSR Proposing Release, it considered mandating one consolidated reporting entity to disseminate all security-based swap transaction data for each asset class by requiring each registered SDR in an asset class to provide all of its security-based swap data to a ''central processor'' that would also be a registered SDR.[1025] The Commission noted that there is substantial precedent for this approach in the equity markets, where market participants may access a consolidated quote for national markets system securities and a consolidated tape reporting executed transactions. The Commission stated, however, that such approach ''may not be warranted given the present [security-based swap] market structure.'' [1026]

The Commission continues to believe there is no need at this time to require consolidation of the publicly disseminated security-based swap data.[1027] Although it is likely that there will be multiple registered SDRs, it is unclear at present the extent to which each will be publicly disseminating a significant number of transactions.[1028] Furthermore, the Commission currently believes that, to the extent that there are different SDR data feeds that warrant consolidation and that such feeds cannot readily be aggregated by market observers themselves, certain market data vendors may be able to do so for commercially reasonable fees. As different SDRs register with the Commission and these SDRs implement Regulation SBSR, the Commission will monitor the situation and consider taking such action as it deems necessary in order to better carry about the Title VII policy of promoting greater transparency in the security-based swap market.

The Commission also acknowledges the recommendation made by one commenter to use Section 13(n)(5)(D)(i) of the Exchange Act to direct all regulatory reports received by multiple registered SDRs into a single ''aggregator'' SDR.[1029] The Commission believes that Rule 13n–4(b)(5), as adopted,[1030] helps to address these concerns. Rule 13n–4(b)(5) requires an SDR to provide the Commission with direct electronic access to the data stored by the SDR. As stated in the SDR Adopting Release:

> data [provided by an SDR to the Commission] must be in a form and manner acceptable to the Commission . . . [T]he form and manner with which an SDR provides the data to the Commission should not only permit the Commission to accurately analyze the data maintained by a single SDR, but also allow the Commission to aggregate and analyze data received from multiple SDRs.[1031]

Thus, the Commission does not believe that it is necessary or appropriate at this time to direct registered SDRs to provide their transaction data to a single ''aggregator'' SDR, because the SDR rules are designed to facilitate the Commission's ability to aggregate information directly. As registered SDRs and their participants develop experience with the Regulation SBSR reporting regime and the Commission develops experience with overseeing that regime, the Commission may consider re-evaluating the need for or the desirability of an aggregator SDR in the future.

XX. Section 31 Fees

In the Regulation SBSR Proposing Release,[1032] the Commission also proposed certain amendments to Rule 31 under the Exchange Act,[1033] which governs the calculation and collection of fees and assessments owed by self-regulatory organizations to the Commission pursuant to Section 31 of the Exchange Act.[1034]

Section 991 of the Dodd-Frank Act amended Section 31(e)(2) of the Exchange Act to provide that certain fees and assessments required under Section 31 will be required to be paid by September 25, rather than September 30.[1035] Therefore, the Commission proposed to make a corresponding change to the definition of ''due date'' in Rule 31(a)(10)(ii) under the Exchange Act [1036] by replacing a reference to ''September 30'' with a reference to ''September 25.''

The Commission also proposed to exempt security-based swap transactions from the application of Section 31 transaction fees. Section 31(c) of the Exchange Act [1037] requires a national securities association to pay fees based on the ''aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities . . . registered on a national securities exchange or subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association.'' Pursuant to Section 761(a) of the Dodd-Frank Act,[1038] security-based swaps are securities.[1039] Accordingly, when security-based swap transactions become subject to prompt last-sale reporting pursuant to the rules of the Commission, the members of a national securities association that effect sales of security-based swaps other than on an exchange would become liable for Section 31 fees for any such sales.[1040] Because of certain potential difficulties in fairly and evenly applying Section 31 fees for sales of security-based swaps,[1041] the Commission proposed to exercise its authority under Section 31(f) of the Exchange Act [1042] to exempt

[1025] *See* 75 FR 75227.

[1026] *Id.*

[1027] In response to the commenter who recommended requiring registered SDRs to accept all security-based swaps in an asset class to reduce fragmentation of data, the Commission notes that Rule 13n–5(b)(1)(ii) under the Exchange Act, adopted as part of the SDR Adopting Release, requires an SDR that accepts reports for any security-based swap in a particular asset class to accept reports for all security-based swaps in that asset class that are reported to the SDR in accordance with that SDR's policies and procedures.

[1028] The Commission notes that, under Rule 902(c)(6), most clearing transactions will not be publicly disseminated. Therefore, to the extent that a registered SDR receives only clearing transactions, it would likely be required to publicly disseminate few if any security-based swap transactions.

[1029] *See* DTCC I at 7 (''Under Section 13 of the Exchange Act . . . security-based swap data repositories shall 'provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity.' Under this authority, the Commission could designate one security-based swap data repository as the recipient of information from other security based-swap data repositories in order to have consolidation and direct access for the Commission'') (citation omitted).

[1030] *See* SDR Adopting Release, Section VI(D)(2)(c)(ii).

[1031] *See id.* The SDR Adopting Release states, further, that ''[t]he Commission recognizes that as the [security-based swap] market develops, new or different data fields may be needed to accurately represent new types of [security-based swap data], in which case the Commission may provide updated specifications of formats and taxonomies to reflect these new developments. Therefore, the Commission intends to publish guidance, as appropriate, on the form and manner that will be acceptable to it for the purposes of direct electronic access'' (internal citations omitted).

[1032] *See* 75 FR 75245–46.

[1033] 17 CFR 240.31.

[1034] 15 U.S.C. 78ee.

[1035] Section 991 of the Dodd Frank Act provides, in relevant part: ''(1) AMENDMENTS.—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended . . . in subsection (e)(2), by striking 'September 30' and inserting 'September 25'.''

[1036] 17 CFR 240.31(a)(10)(ii).

[1037] 15 U.S.C. 78ee(c).

[1038] 15 U.S.C. 78c(a)

[1039] *See* 15 U.S.C. 78c(a)(10).

[1040] A national securities exchange also would be liable for fees in connection with any transactions in security-based swaps executed on its market. *See* 15 U.S.C. 78ee(b).

[1041] *See* Regulation SBSR Proposing Release, 75 FR 75245–46.

[1042] 15 U.S.C. 78ee(f) (''The Commission, by rule, may exempt any sale of securities or any class of

all such sales from the application of Section 31 fees. To carry out that objective, the Commission proposed to add a new subparagraph (ix) to Rule 31(a)(11), which defines the term ''exempt sale,'' to include as an exempt sale ''[a]ny sale of a security-based swap.'' The Commission also proposed to add a new paragraph (19) to Rule 31(a) to provide a definition for the term ''security-based swap.''

One commenter submitted two comment letters on this aspect of the proposal relating to Rule 31.[1043]

The Commission is not adopting these proposed revisions to Rule 31(a). As discussed above, the Commission is not yet requiring that security-based swap transactions be publicly disseminated in real time. Because security-based swaps are not yet subject to prompt last-sale reporting pursuant to the rules of the Commission or a national securities association,[1044] sales of security-based swaps are not yet subject to Section 31 fees. In the future, the Commission anticipates soliciting public comment on block thresholds and the timeframe in which non-block security-based swap transactions must be publicly disseminated. At such time, when implementation of prompt last-sale public dissemination of security-based swap transactions would subject them to Section 31 fees, the Commission can revisit whether to adopt the proposed exemption for security-based swaps from Section 31 fees.

XXI. Paperwork Reduction Act

Certain provisions of Regulation SBSR contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[1045] The Commission published notices requesting comment on the collection of information requirements relating to Regulation SBSR, as originally proposed, in the Regulation SBSR Proposing Release [1046] and, as re-proposed, in the Cross-Border Proposing Release [1047] and submitted relevant information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[1048] The titles for the collections are: (1) Rule 901—Reporting Obligations—For Reporting Sides; (2) Rule 901—Reporting Obligations—For Registered SDRs; (3) Rule 902—Public Dissemination of Transaction Reports; (4) Rule 904—Operating Hours of Registered Security-Based Swap Data Repositories; (5) Rule 905—Correction of Errors in Security-Based Swap Information—For Reporting Sides; (6) Rule 905—Correction of Errors in Security-Based Swap Information—Non-Reporting Sides; (7) Rule 906(a)—Other Duties of All Participants—For Registered SDRs; (8) Rule 906(a)—Other Duties of All Participants—For Non-Reporting Sides; (9) Rule 906(b)—Other Duties of All Participants—For All Participants; (10) Rule 906(c)—Other Duties of All Participants—For Covered Participants; (11) Rule 907—Policies and Procedures of Registered Security-Based Swap Data Repositories; and (12) Rule 908(c)—Substituted Compliance (OMB Control No. 3235–0718). Compliance with these collections of information requirements is mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a currently valid control number.

The Commission is adopting Regulation SBSR, which contains these 12 collections of information, largely as re-proposed, with certain revisions suggested by commenters or designed to clarify the rules.[1049] The rules, as adopted, establish a ''reporting hierarchy'' that specifies the side that has the duty to report a security-based swap that is a covered transaction [1050] and provides for public dissemination of security-based swap transaction information (except as provided in Rule 902(c)). Registered SDRs are required to establish and maintain certain policies and procedures regarding how transaction data are reported and disseminated, and participants of registered SDRs that are registered security-based swap dealers or registered major security-based swap participants are required to establish and maintain policies and procedures that are reasonably designed to ensure that they comply with applicable reporting obligations. Regulation SBSR also requires a person that registers with the Commission as an SDR also to register with the Commission as a SIP.

The hours and costs associated with complying with Regulation SBSR constitute reporting and cost burdens imposed by each collection of information. Certain estimates (*e.g.,* the number of reporting sides, the number of non-reporting sides, the number of participants, and the number of reportable events [1051] pertaining to a security-based swap transaction) contained in the Commission's earlier PRA assessments have been updated to reflect the rule text of Regulation SBSR, as adopted, as well as additional information and data now available to the Commission, as discussed in further detail below. The Commission believes that the methodology used for calculating the re-proposed paperwork burdens set forth in the Cross-Border Proposing Release is appropriate and has received no comments to the contrary. The revised paperwork burdens estimated by the Commission herein are consistent with those made in connection with the re-proposal of Regulation SBSR, which was included in the Cross-Border Proposing Release. However, as described in more detail below, certain estimates have been modified, as necessary, to conform to the adopted rules and to reflect the most recent data available to the Commission.

The Commission requested comment on the collection of information requirements included in both the Regulation SBSR Proposing Release and the Cross-Border Proposing Release. As noted above, the Commission received 86 comment letters on the Regulation SBSR Proposing Release and six comment letters on the Cross-Border Proposing Release that specifically referenced Regulation SBSR. Although the comment letters did not specifically address the Commission's estimates for the proposed collection of information requirements, views of commenters relevant to the Commission's analysis of burdens, costs, and benefits of Regulation SBSR are discussed below.

The rules containing these specific collections of information are discussed further below.

sales of securities from any fee or assessment imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system.'').

[1043] *See* OneChicago I at 2–3 (arguing that, because ''exchange for physical'' (''EFP'') transactions conducted on OneChicago are economically similar to security-based swap transactions, EFP transactions also should be exempt from Section 31 fees or, alternatively, that security-based swaps should be subject to Section 31 fees); OneChicago II (same).

[1044] *See supra* Section VII (discussing phased approach to public dissemination and block trades, which will permit security-based swap transactions to be reported any time up to 24 hours after the time of execution (or, if 24 hours after the time of execution would fall on a day that is not a business day, by the same time on the next day that is a business day) during the first phase).

[1045] 44 U.S.C. 3501 *et seq.*

[1046] *See* Regulation SBSR Proposing Release, 75 FR 75251–61.

[1047] *See* Cross-Border Proposing Release, 78 FR 31115–18.

[1048] 44 U.S.C. 3507; 5 CFR 1320.11.

[1049] In addition, the Commission, in separate releases, is adopting rules relating to SDR registration, duties, and core principles and proposing amendments to Regulation SBSR.

[1050] *See supra* notes 11–12 and accompanying text.

[1051] A reportable event includes both an initial security-based swap transaction, required to be reported pursuant to Rule 901(a), as well as a life cycle event, the reporting of which is governed by Rule 901(e).

A. Definitions—Rule 900

Rule 900 sets forth definitions of various terms used in Regulation SBSR. In the Regulation SBSR Proposing Release, the Commission stated its belief that Rule 900, since it contains only definitions of relevant terms, would not be a ''collection of information'' within the meaning of the PRA.[1052] Although Rule 900, as adopted, contains revisions to re-proposed Rule 900, including additions and deletions of certain defined terms and modification of others, the Commission continues to believe that Rule 900 does not constitute a ''collection of information'' within the meaning of the PRA.

B. Reporting Obligations—Rule 901

Rule 901, as adopted, sets forth various requirements relating to the reporting of covered transactions. Rule 901 of Regulation SBSR, as adopted, contains ''collection of information requirements'' within the meaning of the PRA. The title of this collection is ''Rule 901—Reporting Obligations.''

1. Summary of Collection of Information

Title VII of the Dodd-Frank Act amended the Exchange Act to require the reporting of security-based swap transactions. Accordingly, the Commission is adopting Rule 901 under the Exchange Act to implement this requirement. Rule 901 specifies, with respect to each reportable event pertaining to covered transactions, who is required to report, what data must be reported, when it must be reported, where it must be reported, and how it must be reported. Rule 901(a), as adopted, establishes a ''reporting hierarchy'' that specifies the side that has the duty to report a security-based swap that is a covered transaction.[1053] The reporting side, as determined by the reporting hierarchy, is required to submit the information required by Regulation SBSR to a registered SDR. The reporting side may select the registered SDR to which it makes the required report.

Pursuant to Rule 901(b), as adopted, if there is no registered SDR that will accept the report required by Rule 901(a), the person required to make the report must report the transaction to the Commission. Rule 901(c) sets forth the primary trade information and Rule 901(d) sets forth the secondary trade information that must be reported. Under the final rules, covered transactions—regardless of their notional amount—must be reported to a registered SDR at any point up to 24 hours after the time of execution, or, in the case of a security-based swap that is subject to regulatory reporting and public dissemination solely by operation of Rule 908(a)(1)(ii), within 24 hours after the time of acceptance for clearing.[1054] Except as required by Rule 902(c), the information reported pursuant to Rule 901(c) must be publicly disseminated. Information reported pursuant to Rule 901(d) is for regulatory purposes only and will not be publicly disseminated.

Rule 901(e) requires the reporting of life cycle events, and adjustments due to life cycle events, within 24 hours of the time of occurrence, to the entity to which the original transaction was reported. The report must contain the transaction ID of the original transaction.

In addition to the reporting duties that reporting sides incur under Rule 901, Rule 901 also imposes certain duties on a registered SDR that receives security-based swap transaction data. Rule 901(f) requires a registered SDR to timestamp, to the second, any information submitted to it pursuant to Rule 901, and Rule 901(g) requires a registered SDR to assign a transaction ID to each security-based swap, or establish or endorse a methodology for transaction IDs to be assigned by third parties. Rule 901(h) requires reporting sides to electronically transmit the information required by Rule 901 in a format required by the registered SDR.

Rule 901(i) requires reporting of pre-enactment security-based swaps and transitional security-based swaps to the extent that information about such transactions is available.

As detailed in Sections II to V, *supra,* in adopting Rule 901, the Commission has made certain changes to Rule 901, both as originally proposed and as re-proposed in the Cross-Border Proposing Release, in response to comments or in order to clarify various provisions. The Commission believes that these changes do not substantially alter the underlying method of computing the paperwork burdens, but do result in changes to the number of impacted entities and the number to transactions covered by the rules, thus impacting the paperwork burden totals that were previously estimated for Rule 901.

2. Use of Information

The security-based swap transaction information required to be reported pursuant to Rule 901 will be used by registered SDRs, market participants, the Commission, and other relevant authorities. The information reported by reporting sides pursuant to Rule 901 will be used by registered SDRs to publicly disseminate reports of security-based swap transactions, as well as to offer a resource for the Commission and other relevant authorities to obtain detailed information about the security-based swap market. Market participants will use the public market data feed, among other things, to assess the current market for security-based swaps and to assist in the valuation of their own positions. The Commission and other relevant authorities will use information about security-based swap transactions reported to and held by registered SDRs to monitor and assess systemic risks, as well as for market surveillance purposes.

3. Respondents

Rule 901(a) assigns reporting duties for covered transactions. In the Cross-Border Proposing Release, the Commission revised its preliminary estimate to 300 respondents.[1055] The Commission continues to believe that it is reasonable to use 300 as an estimate of ''reporting sides'' (as that term was used in the Cross-Border Proposing Release).

The Commission notes that, since issuing the Regulation SBSR Proposing Release, the Commission has obtained additional and more granular data regarding participation in the security-based swap market from DTCC–TIW. These historical data suggest that, among the 300 reporting sides, approximately 50 are likely to be required to register with the Commission as security-based swap dealers and approximately five are likely to register as major security-based swap participants.[1056] These data further suggest that these 55 reporting sides likely will account for the vast majority of recent security-based swap transactions and reports and that there

[1052] *See* Regulation SBSR Proposing Release, 75 FR 75246.

[1053] *See supra* notes 11–12 and accompanying text.

[1054] *See supra* Section VII(B)(1) (discussing Rule 901(j) and the rationale for 24-hour reporting timeframe). In addition, as discussed in more detail in Section VII(B), *supra,* if 24 hours after the time of execution would fall on a non-business day (*i.e.,* a Saturday, Sunday, or U.S. federal holiday), reporting would be required by the same time on the next business day. As discussed in Section XV(C)(4), *supra,* Rule 908(a)(1)(ii), as adopted, provides that a security-based swap that is subject to regulatory reporting and public dissemination solely by operation of Rule 908(a)(1)(ii)—*i.e.,* because the security-based swap has been accepted for clearing by a clearing agency having its principal place of business in the United States—must be reported within 24 hours of acceptance for clearing.

[1055] *See* Cross-Border Proposing Release, 78 FR 31113 (lowering the estimate of reporting sides from 1,000 to 300).

[1056] *See id.* at 31103.

are only a limited number of security-based swap transactions that do not include at least one of these larger counterparties on either side.[1057]

Rule 901 imposes certain duties on registered SDRs. In the Regulation SBSR Proposing Release, the Commission preliminarily estimated that the number of registered SDRs would not exceed ten, an estimate that was affirmed in the Cross-Border Proposing Release.[1058] The Commission continues to believe that it is reasonable to estimate ten registered SDR respondents for the purpose of estimating collection of information burdens for Regulation SBSR.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

Pursuant to Rule 901, covered transactions must be reported to a registered SDR or to the Commission. Together, sections (a), (b), (c), (d), (e), (h), and (j) of Rule 901 set forth the parameters that govern how reporting sides report covered transactions. Rule 901(i) addresses the reporting of pre-enactment and transitional security-based swaps. These reporting requirements impose initial and ongoing burdens on reporting sides. The Commission believes that these burdens will be a function of, among other things, the number of reportable events and the data elements required to be reported for each such event. Rule 901(f) requires a registered SDR to the time stamp, to the second, all reported information, and Rule 901(g) requires a registered SDR to assign a transaction ID to each security-based swap, or establish or endorse a methodology for transaction IDs to be assigned by third parties. These requirements impose initial and ongoing burdens on registered SDRs.

a. Baseline Burdens

In the Regulation SBSR Proposing Release, the Commission estimated that respondents would face three categories of burdens to comply with Rule 901.[1059] First, each entity that would incur a duty to report security-based swap transactions pursuant to Regulation SBSR (a ''reporting party'' [1060]) would likely have to develop an internal order and trade management system (''OMS'') capable of capturing the relevant transaction information.[1061] Second, each such entity would have to implement a reporting mechanism.[1062] Third, each such entity would have to establish an appropriate compliance program and support for the operation of any OMS and reporting mechanism.[1063] In the Regulation SBSR Proposing Release, the Commission preliminarily estimated that the initial, aggregate annualized burden associated with Rule 901 would be 1,438 hours per reporting party—for a total of 1,438,300 hours for all reporting parties—in order to develop an OMS, implement a reporting mechanism, and establish an appropriate compliance program and support system.[1064] The Commission preliminarily estimated that the ongoing aggregate annualized burden associated with Rule 901 would be 731 hours per reporting party, for a total of 731,300 hours for all reporting parties.[1065] The Commission further estimated that the initial aggregate annualized dollar cost burden on reporting parties associated with Rule 901 would be $201,000 per reporting party, for a total of $201,000,000 for all reporting parties.[1066]

b. Burdens of Final Rule 901

For Reporting Sides. The reporting hierarchy is designed to place the duty to report covered transactions on counterparties who are most likely to have the resources and who are best able to support the reporting function.

Reporting sides that fall under the reporting hierarchy in Rule 901(a)(2)(ii) incur certain burdens as a result thereof with respect to their reporting of covered transactions. As stated above, the Commission believes that an estimate of 300 reporting sides that would incur the duty to report under Regulation SBSR is reasonable for estimating collection of information burdens under the PRA. This estimate includes all of those persons that incur a reporting duty under Regulation SBSR, as adopted, including registered security-based swap dealers and registered major security-based swap participants. This estimate also includes some smaller counterparties to security-based swaps that could incur a reporting duty, but many fewer than estimated in the PRA of the Regulation SBSR Proposing Release.

As discussed in more detail in Section V, *supra,* Rule 901(a)(2)(ii) adopts the reporting hierarchy set forth in the Cross-Border Proposing Release, but limits its application to uncleared transactions. The Commission believes, however, that this limitation will not materially change the number of reporting sides for PRA purposes, as there likely would be a significant overlap between the approximately 300 reporting sides reporting uncleared transactions and those reporting other security-based swaps.

In the Regulation SBSR Proposing Release, the Commission preliminarily estimated that there would be 15.5 million reportable events associated with security-based swap transactions per year.[1067] In the Cross-Border Proposing Release, in addition to lowering its estimate of the number of reporting sides from 1,000 to 300, the Commission also revised its estimate of the number of reportable events to approximately 5 million.[1068] Since issuing the Cross-Border Proposing Release, however, the Commission has obtained additional and more granular data regarding participation in the security-based swap market from DTCC–TIW. As a result, the Commission is now further revising its estimate of the number of reportable events. Accordingly, the Commission now estimates that there will be approximately 3 million reportable events per year under Rule 901, as adopted.[1069] The Commission further

[1057] As a result, the Commission generally will continue to use 300 as an estimate of the number of reporting sides. In cases where a rule is more limited in its application, for example Rule 906(c), the Commission may use a different number that reflects some subset of the estimated 300 reporting sides. *See also* Cross-Border Adopting Release, 79 FR 47300 (stating that 55 firms might register as security-based swap dealers or major security-based swap participants).

[1058] *See* Regulation SBSR Proposing Release, 75 FR 75247; *See also* Cross-Border Proposing Release, 78 FR 31113.

[1059] *See* Regulation SBSR Proposing Release, 75 FR 75248.

[1060] In the Regulation SBSR Proposing Release, the Commission proposed the term ''reporting party'' to describe the entity with the duty to report a particular security-based swap transaction. *See* 75 FR 75211. In the Cross-Border Proposing Release, the Commission revised the term ''reporting party'' to ''reporting side'' as part of the re-proposal of Regulation SBSR. *See* 78 FR 31059.

[1061] *See* Regulation SBSR Proposing Release, 75 FR 75248.

[1062] *See id.*

[1063] *See id.*

[1064] *See id.* at 75250.

[1065] *See id.*

[1066] *See id.* In the Cross-Border Proposing Release, the Commission noted that the Regulation SBSR Proposing Release incorrectly stated this total as $301,000 per reporting party. The correct number is $201,000 per reporting party ($200,000+$1,000). *See* 78 FR 31113, note 1259.

[1067] *See* Regulation SBSR Proposing Release, 75 FR 75248.

[1068] *See* Cross-Border Proposing Release, 78 FR 31114.

[1069] According to data published by the Bank for International Settlements, the global notional amount outstanding in equity forwards and swaps as of December 2013 was $2.28 trillion. The notional amount outstanding in single-name CDS was approximately $11.32 trillion, in multi-name index CDS was approximately $8.75 trillion, and in multi-name, non-index CDS was approximately $950 billion. *See* Semi-annual OTC derivatives statistics at end-December 2013 (June 2014), Table 19, available at *http://www.bis.org/statistics/dt1920a.pdf* (last visited September 22, 2014). For the purposes of this analysis, the Commission assumes that multi-name index CDS are not narrow-

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estimates that approximately 2 million of these reportable events will consist of uncleared transactions (*i.e.,* those transactions that will be reported to a registered SDR by the reporting sides). The Commission noted in the Cross-Border Proposing Release, and continues to believe, that the reduction in the estimate of the number of reportable events per year is likely a result of several factors.[1070]

The Commission believes that, once a respondent's reporting infrastructure and compliance systems are in place, the burden of reporting each individual reportable event will be *small* when compared to the burdens of establishing the reporting infrastructure and compliance systems.[1071] As stated above, the Commission estimates that 2 million of the 3 million total reportable events would consist of the initial reporting of security-based swaps as well as the reporting of any life cycle events. The Commission estimates that of the 2 million reportable events, approximately 900,000 would involve the reporting of new security-based swap transactions, and approximately 1,100,000 would involve the reporting of life cycle events under Rule 901(e). The Commission estimates that Rule 901(a) would result in reporting sides having a total burden of 4,500 hours attributable to the initial reporting of security-based swaps by reporting sides to registered SDRs under Rules 901(c) and 901(d) over the course of a year.[1072] The Commission further estimates that reporting sides would have a total burden of 5,500 hours attributable to the reporting of life cycle events under Rule 901(e) over the course of a year.[1073] Therefore, the Commission believes that Rule 901, as adopted, would result in a total reporting burden for reporting sides under Rules 901(c) and (d) along with the reporting of life cycle events under Rule 901(e) of 10,000 burden hours per year. The Commission continues to believe that many reportable events will be reported through electronic means and that the ratio of electronic reporting to manual reporting is likely to increase over time. The Commission continues to believe that the bulk of the burden hours estimated above will be attributable to manually reported transactions. Thus, reporting sides that capture and report transactions electronically will likely incur bear fewer burden hours than those reporting sides that capture and report transactions manually.

Based on the foregoing, the Commission estimates that Rule 901, as adopted, will impose an estimated total first-year burden of approximately 1,394 hours[1074] per reporting side for a total first-year burden of 418,200 hours for all reporting sides.[1075] The Commission estimates that Rule 901, as adopted, will impose ongoing annualized aggregate burdens of approximately 687 hours[1076] per reporting side for a total aggregate annualized cost of 206,100 hours for all reporting sides.[1077] The Commission further estimates that Rule 901, as adopted, will impose initial and ongoing annualized dollar cost burdens of $201,000 per reporting side, for total aggregate initial and ongoing annualized dollar cost burdens of $60,300,000.[1078]

For Registered SDRs. In the Regulation SBSR Proposing Release, the Commission set forth estimated burdens on registered SDRs related to Rule 901.[1079] The Commission continues to believe that these estimated burdens are reasonable.

Rule 901(f) requires a registered SDR to time-stamp, to the second, information that it receives. Rule 901(g) requires a registered SDR to assign a unique transaction ID to each security-based swap it receives or establish or endorse a methodology for transaction IDs to be assigned by third parties. The Commission continues to believe that such design elements will pose some additional burdens to incorporate in the context of designing and building the technological framework that will be required of an SDR to become registered.[1080] Therefore, the Commission estimates that Rules 901(f) and 901(g) will impose an initial one-time aggregate burden of 1,200 burden hours, which corresponds to 120 burden hours per registered SDR.[1081] This figure is based on an estimate of ten registered SDRs, which the Commission continues to believe is reasonable.

Once operational, these elements of each registered SDR's system will have to be supported and maintained. Accordingly, the Commission estimates that Rule 901(f) and 901(g) will impose

based index CDS and, therefore, are not security-based swaps. The Commission also assumes that all instruments reported as equity forwards and swaps are security-based swaps, potentially resulting in underestimation of the proportion of the security-based swap market represented by single-name CDS. Based on those assumptions, single-name CDS appear to constitute roughly 82% of the security-based swap market. Although the BIS data reflect the global OTC derivatives market, and not just the U.S. market, the Commission believes that it is reasonable to assume these ratios would be similar in the U.S. market. The Commission now estimates that there were approximately 2.26 million single-name CDS transactions in 2013. Because single-name CDS appear to constitute roughly 78% of the security-based swap market, the Commission now estimates that there are approximately 3 million security-based swap transactions (*i.e.,* 2,260,000/0.78=2,898,329 reportable events).

[1070] *See* 78 FR 31115.

[1071] In the Regulation SBSR Proposing Release, the Commission preliminarily estimated that reporting specific security-based swap transactions to a registered SDR—separate from the establishing of infrastructure and compliance systems that support reporting—would impose an annual aggregate cost of approximately $5,400,000. *See* 75 FR 75265. The Commission further estimated that Rule 901 would impose an aggregate total first-year cost of approximately $1,039,000,000 and an ongoing annualized aggregate cost of approximately $703,000,000. *See id.* at 75280. *See also* Cross-Border Proposing Release, 78 FR 31115 (stating the Commission's preliminary belief that the reporting of a single reportable event would be *de minimis* when compared to the burdens of establishing the reporting infrastructure and compliance systems).

[1072] In the Regulation SBSR Proposing Release, the Commission estimated that it would take approximately 0.005 hours for each security-based swap transaction to be reported. *See* 75 FR 75249, note 195. The Commission calculates the following: ((900,000 × 0.005)/(300 reporting sides)) = 15 burden hours per reporting side or 4,500 total burden hours attributable to the initial reporting of security-based swaps.

[1073] In the Regulation SBSR Proposing Release, the Commission estimated that it would take approximately 0.005 hours for each security-based swap transaction to be reported. *See* 75 FR 75249, note 195. The Commission calculates the following: ((1,100,000 × 0.005)/(300 reporting sides)) = 18.33 burden hours per reporting side or 5,500 total burden hours attributable to the reporting of life cycle events under Rule 901(e).

[1074] The Commission derived its estimate from the following: (355 hours (one-time hourly burden for establishing and OMS) + 172 hours (one-time hourly burden for establishing security-based swap reporting mechanisms) + 180 hours (one-time hourly burden for compliance and ongoing support) = 707 hours (one-time total hourly burden). *See* Regulation SBSR Proposing Release, 75 FR 75248–50, notes 186, 194, and 201. (436 hours (annual-ongoing hourly burden for internal order management) + 33.3 hours (revised annual-ongoing hourly burden for security-based swap reporting mechanisms) + 218 hours (annual-ongoing hourly burden for compliance and ongoing support) = 687.3 hours (one-time total hourly burden. *See id.* at 75248–50, notes 187 and 201 (707 one-time hourly burden + 687 revised annual-ongoing hourly burden = 1,394 total first-year hourly burden).

[1075] The Commission derived its estimate from the following: (1,394 hours per reporting side × 300 reporting sides) = 418,200 hours.

[1076] *See* Cross-Border Proposing Release, 78 FR 31112–15.

[1077] The Commission derived its estimate from the following: (687 hours per reporting side × 300 reporting sides) = 206,100 hours.

[1078] The Commission derived its estimate from the following: ($201,000 per reporting side × 300 reporting sides) = $60,300,000. *See* Cross-Border Proposing Release, 78 FR 31113–15. The Commission originally estimated this burden based on discussions with various market participants. *See* Regulation SBSR Proposing Release, 75 FR 75247–50.

[1079] *See* 75 FR 75250–51.

[1080] The Commission has adopted additional rules under the Exchange Act relating to the duties, data collection and maintenance requirements, and automated systems requirements of SDRs. *See* SDR Adopting Release.

[1081] *See* Regulation SBSR Proposing Release, 75 FR 75250. This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer at 80 hours) + (Sr. Systems Analyst at 20 hours) + (Compliance Manager at 8 hours) + (Director of Compliance at 4 hours) + (Compliance Attorney at 8 hours)) × (10 registered SDRs)] = 1,200 burden hours, which is 120 hours per registered SDR.

an annual aggregate burden of 1,520 burden hours, which corresponds to 152 burden hours per registered SDR.[1082] This figure represents an estimate of the burden for a registered SDR for support and maintenance costs for the registered SDR's systems to time stamp incoming submissions and assign transaction IDs.

Thus, the Commission estimates that the first-year aggregate annualized burden on registered SDRs associated with Rules 901(f) and 901(g) will be 2,720 burden hours, which corresponds to 272 burden hours per registered SDR.[1083] Correspondingly, the Commission estimates that the ongoing aggregate annualized burden associated with Rules 901(f) and 901(g) will be 1,520 burden hours, which corresponds to 152 burden hours per registered SDR.[1084] The above burden estimates pertaining to Rules 901(f) and 901(g) are identical to those set forth in the Regulation SBSR Proposing Release.[1085]

Since Regulation SBSR, as adopted, requires reporting for only covered transactions, registered SDRs will be required to receive, process, and potentially disseminate a smaller number of security-based swaps than originally envisioned. Because the bulk of an SDR's burdens and costs under Regulation SBSR are not transaction-based, however, the Commission has determined that the burden and cost estimates set forth in the Cross-Border Proposing Release remain valid for the purposes of the PRA.

In addition, the Commission recognizes that, since the publication of the Regulation SBSR Proposing Release, many entities already have spent considerable time and resources building the infrastructure that will support reporting of security-based swaps. Indeed, some reporting is already occurring voluntarily.[1086] As a result, the Commission notes that the burdens and costs calculated herein could be greater than those actually incurred by affected parties as a result of the adoption of Regulation SBSR. Nonetheless, the Commission believes that its estimates represent a reasonable upper bound of the actual burdens and costs required to comply with Regulation SBSR.

5. Recordkeeping Requirements

Rule 13n–5(b)(4) under the Exchange Act requires an SDR to maintain the transaction data and related identifying information that it collects for not less than five years after the applicable security-based swap expires, and historical positions for not less than five years.[1087] Accordingly, security-based swap transaction reports received by a registered SDR pursuant to Rule 901 will be required to be retained by the registered SDR for not less than five years.

6. Collection of Information Is Mandatory

Each collection of information discussed above is mandatory.

7. Confidentiality of Responses to Collection of Information

For the majority of security-based swap transactions, all of the information collected pursuant to Rule 901(c) will be widely available to the public because these transactions will be publicly disseminated by a registered SDR pursuant to Rule 902. However, certain security-based swaps are not subject to Rule 902's public dissemination requirement;[1088] therefore, information about these transactions will not be publicly available. In addition, reporting sides must provide certain information about security-based swap transactions pursuant to Rule 901(d). Rule 901(d) information is for regulatory purposes and will not be publicly disseminated.

An SDR, pursuant to Section 13(n)(5) of the Exchange Act and Rules 13n–4(b)(8) and 13n–9 thereunder, must maintain the privacy of security-based swap information,[1089] including information reported pursuant to Rule 901(d) of Regulation SBSR, as well as information about a security-based swap transaction reported pursuant to Rule 901(c) where the transaction falls into a category enumerated in Rule 902(c). To the extent that the Commission receives these kinds of information under Regulation SBSR, such information will be kept confidential, subject to the provisions of applicable law.

C. Public Dissemination of Transaction Reports—Rule 902

Rule 902(a), as adopted, requires a registered SDR to publicly disseminate a transaction report immediately upon receipt of information about a security-based swap, or a life cycle event or adjustment due to a life cycle event (or upon re-opening following a period when the registered SDR was closed), except in certain limited circumstances described in Rule 902(c). A published transaction report must consist of all the information reported pursuant to Rule 901(c), plus any condition flags required by the policies and procedures of the registered SDR to which the transaction is reported. Certain provisions of Rule 902 of Regulation SBSR contain ''collection of information requirements'' within the meaning of the PRA. The title of this collection is ''Rule 902—Public Dissemination of Transaction Reports.''

1. Summary of Collection of Information

As adopted, Rule 902(a) generally requires that a registered SDR publicly disseminate a transaction report for each security-based swap transaction, or a life cycle event or adjustment due to a life cycle, immediately upon receipt of information about the security-based swap submitted by a reporting side pursuant to Rule 901(c). The transaction report must contain all of the information reported pursuant to Rule 901(c) along with any condition flags required by the policies and procedures of the registered SDR to which the transaction is reported.[1090] If its systems are unavailable to publicly disseminate these transaction data immediately upon receipt, the registered SDR is required to disseminate the transaction data immediately upon re-opening. Rule 902(a), as adopted, provides registered SDRs with the authority and discretion to establish the content, format, and mode of dissemination through its policies and procedures, as long as it does so in compliance with the information required to be disseminated by Rule 901(c).

Rule 902(b), as proposed and re-proposed, addressed how a registered SDR would be required to publicly disseminate transaction reports of block trades. As discussed in more detail above, the Commission is not adopting Rule 902(b).

Rule 902(c), as adopted, prohibits a registered SDR from disseminating: (1) The identity of any counterparty to a security-based swap; (2) with respect to a security-based swap that is not cleared

[1082] *See* Regulation SBSR Proposing Release, 75 FR 75250. This figure is based on discussions with various market participants as follows: [((Sr. Programmer at 60 hours) + (Sr. Systems Analyst at 48 hours) + (Compliance Manager at 24 hours) + (Director of Compliance at 12 hours) + (Compliance Attorney at 8 hours)) × (10 SDRs)] = 1,520 burden hours, which is 152 hours per registered SDR.

[1083] *See* Regulation SBSR Proposing Release, 75 FR 75250. This figure is based on the following: [(1,200) + (1,520)] = 2,720 burden hours, which corresponds to 272 burden hours per registered SDR.

[1084] *See supra* note 1083.

[1085] *See* Regulation SBSR Proposing Release, 75 FR 75250.

[1086] DTCC currently compiles information on the credit default swap market. *See http://www.dtcc.com/about/businesses-and-subsidiaries/ddr-us.aspx* (last visited September 22, 2014).

[1087] *See* SDR Adopting Release, Section VI(E)(4).

[1088] *See supra* Section VI(D).

[1089] *See* SDR Adopting Release, Sections VI(D)(2) and VI(I)(1).

[1090] *See* Rule 907(a)(4).

at a registered clearing agency and that is reported to a registered SDR, any information disclosing the business transactions and market positions of any person; (3) any information regarding a security-based swap reported pursuant to Rule 901(i); (4) any non-mandatory report; (5) any information regarding a security-based swap that is required to be reported pursuant to Rule 901 and Rule 908(a)(1) but is not required to be publicly disseminated pursuant to Rule 908(a)(2); (6) any information regarding certain clearing transactions; and (7) any information regarding the allocation of a security-based swap.

Rule 902(d) provides that no person shall make available to one or more persons (other than a counterparty or a post-trade processor) transaction information relating to a security-based swap before the reporting side transmits the primary trade information about the security-based swap to a registered SDR.

2. Use of Information

The public dissemination requirements contained in Rule 902 are designed to promote post-trade transparency of security-based swap transactions.

3. Respondents

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

4. Total Initial and Annual Reporting and Recordkeeping Burdens

Rule 13n–5(b) sets forth requirements for collecting and maintaining transaction data that each SDR will be required to follow.[1091] The SDR Adopting Release describes the relevant burdens and costs that complying with Rule 13n–5(b) will entail.[1092]

In the Regulation SBSR Proposing Release, the Commission stated its preliminary belief that a registered SDR would be able to integrate the capability to publicly disseminate security-based swap transaction reports required under Rule 902 as part of its overall system development for transaction data.[1093] Based on discussions with industry participants, the Commission estimates that, to implement and comply with the public dissemination requirement of Rule 902, each registered SDR will incur a burden equal to an additional 20% of the first-year and ongoing burdens discussed in the SDR Registration Proposing Release.[1094] This estimate was first proposed in the Regulation SBSR Proposing Release and reiterated in the Cross-Border Proposing Release, and the Commission believes that it remains valid.[1095]

Based on the above, the Commission estimates that the initial one-time aggregate burden imposed by Rule 902 for development and implementation of the systems needed to disseminate the required transaction information, including the necessary software and hardware, will be approximately 8,400 hours and a dollar cost of $2 million for each registered SDR, which aggregates to 84,000 hours and a dollar cost of $20 million for all SDR respondents.[1096] In addition, the Commission estimates that annual aggregate burden (initial and ongoing) imposed by the Rule 902 will constitute approximately 5,040 hours and a dollar cost of $1.2 million for each registered SDR, which aggregates to 50,400 hours and a dollar cost of $12 million for all SDR respondents.[1097] Thus, the Commission estimates that the total first-year (initial) aggregate annualized burden on registered SDRs associated with public dissemination requirement under Rule 902 will be approximately 134,400 hours and a dollar cost of $32 million, which corresponds to a burden of 13,440 hours and a dollar cost of $3.2 million for each registered SDR.[1098]

5. Recordkeeping Requirements

Pursuant to Rule 13n–7(b) under the Exchange Act, a registered SDR is required to keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available to representatives of the Commission for inspection and examination.[1099] This requirement encompasses all security-based swap transaction reports disseminated by a registered SDR pursuant to Rule 902 and are required to be retained for not less than five years.

6. Collection of Information Is Mandatory

Each collection of information discussed above Is mandatory.

7. Confidentiality of Responses to Collection of Information

Most of the information required under Rule 902 will be widely available to the public to the extent it is incorporated into security-based swap transaction reports that are publicly disseminated by a registered SDR pursuant to Rule 902. However, Rule 902(c) prohibits public dissemination of certain kinds of transactions and certain kinds of transaction information. An SDR, pursuant to Sections 13(n)(5) of the Exchange Act and Rules 13n–4(b)(8) and 13n–9 thereunder will be under an obligation to maintain the privacy of this security-based swap information.[1100] To the extent that the Commission receives confidential information pursuant to this collection of information, such information must be kept confidential, subject to the provisions of applicable law.

D. Coded Information—Rule 903

Regulation SBSR, as adopted, permits or, in some instances, requires security-based swap counterparties to report coded information to registered SDRs using UICs. These UICs will be used to identify products, transactions, and persons, as well as certain business units and employees of legal persons.[1101] Rule 903 establishes standards for assigning and using coded information in security-based swap

[1091] *See* SDR Adopting Release, Section VI(E)(1).

[1092] *See* SDR Adopting Release, Section VII(D)(2).

[1093] *See* Regulation SBSR Proposing Release, 75 FR 75252.

[1094] *See* Regulation SBSR Proposing Release, 75 FR 75252. *See also* SDR Adopting Release, Section VII(D)(2). This estimate was based on discussions with industry members and market participants, including entities that may register as SDRs under Title VII, and includes time necessary to design and program a registered SDR's system to calculate and disseminate initial and subsequent trade reports.

[1095] *See* Regulation SBSR Proposing Release, 75 FR 75252. *See also* Cross-Border Proposing Release, 78 FR 31198.

[1096] *See* SDR Adopting Release, Section VII(D)(2) for the total burden associated with establishing SDR technology systems. The Commission derived this estimated burden from the following: [((Attorney at 1,400 hours) + (Compliance Manager at 1,600 hours) + (Programmer Analyst at 4,000 hours) + (Senior Business Analyst at 1,400 hours)) × (10 registered SDRs)] = 84,000 burden hours, which corresponds to 8,400 hours per registered SDR.

[1097] *See* SDR Adopting Release, Section VII(D)(2) for the total ongoing annual burdens associated with operating and maintaining SDR technology systems. The Commission derived this estimated burden from the following: [((Attorney at 840 hours) + (Compliance Manager at 960 hours) + (Programmer Analyst at 2,400 hours) + (Senior Business Analyst at 840 hours)) × (10 registered SDRs)] = 50,400 burden hours, which corresponds to 5,040 hours per registered SDR.

[1098] These estimates are based on the following: [(84,000 one-time burden hours) + (50,400 annual burden hours)] = 134,400 burden hours, which corresponds to 13,440 hours per registered SDR; [($20 million one-time dollar cost burden) + ($12 million annual dollar cost burden)] = $32 million cost burden, which corresponds to $3.2 million per registered SDR.

[1099] *See* SDR Adopting Release, Section VI(G)(2).

[1100] *See* SDR Adopting Release, Sections VI(D)(2) and VI(I)(1).

[1101] *See supra* Section II (describing UICs that must be reported to registered SDRs pursuant to Regulation SBSR).

reporting and dissemination to help ensure that codes are assigned in an orderly manner and that relevant authorities, market participants, and the public are able to interpret coded information stored and disseminated by registered SDRs.

In the Regulation SBSR Proposing Release, the Commission stated its belief that Rule 903 would not be a ''collection of information'' within the meaning of the PRA because the rule would merely permit reporting parties and registered SDRs to use codes in place of certain data elements, subject to certain conditions.[1102] In re-proposing Rule 903 in the Cross-Border Proposing Release, the Commission made only technical and conforming changes to Rule 903 to incorporate the use of the term ''side.'' [1103] Rule 903, as adopted, includes a requirement that, if the Commission has recognized an IRSS that assigns UICs to persons, each participant of a registered SDR shall obtain a UIC from or through that IRSS.[1104] Because the Commission also is recognizing the GLEIS—which issues LEIs—as an IRSS, any person who is a participant of one or more registered SDRs will have to obtain an LEI from or through the GLEIS. Therefore, the Commission now believes that Rule 903 constitutes a ''collection of information'' within the meaning of the PRA. The title of this collection is ''Rule 903—Coded Information.''

1. Summary of Collection of Information

Rule 903(a) provides that, if an IRSS that meets certain criteria is recognized by the Commission and has assigned a UIC to a person, unit of a person, or product (or has endorsed a methodology for assigning transaction IDs), all registered SDRs must use that UIC in carrying out their responsibilities under Regulation SBSR. If no such system has been recognized by the Commission, or if such a system has not assigned a UIC to a particular person, unit of a person, or product (or has not endorsed a methodology for assigning transaction IDs), the registered SDR must assign a UIC to that person, unit of a person, or product using its own methodology (or endorse a methodology for assigning transaction IDs). The following UICs are contemplated by Regulation SBSR: Branch ID, broker ID, counterparty ID, execution agent ID, platform ID, product ID, trader ID, trading desk ID, transaction ID, and ultimate parent ID. UICs are intended to allow registered SDRs and the Commission and other relevant authorities to aggregate transaction information across a variety of vectors. For example, the trader ID will allow the Commission and other relevant authorities to identify all trades carried out by an individual trader. The product ID will allow the Commission and other relevant authorities to identify all transactions in a particular security-based swap product. The transaction ID will allow counterparties and the registered SDR to link a series of life cycle events to each other and to the original transaction. As discussed in Section X(B)(2), *supra,* the Commission has recognized the GLEIS as an IRSS that meets the criteria of Rule 903. Therefore, if an entity has an LEI issued by or through the GLEIS, that LEI must be used for all purposes under Regulation SBSR. Furthermore, each participant that acts as a guarantor of a direct counterparty's performance of any obligation under a security-based swap that is subject to § 242.908(a) shall, if the direct counterparty has not already done so, obtain a UIC for identifying the direct counterparty from or through that system, if that system permits third-party registration without a requirement to obtain prior permission of the direct counterparty.

2. Use of Information

The information provided pursuant to Rule 903 is necessary to for any person who is a participant of at least one registered SDR to be identified by an LEI for reporting purposes under Regulation SBSR.

3. Respondents

Rule 903 applies to any person who is a participant of at least one registered SDR. The Commission estimates that there may be up to 4,800 security-based swap counterparties that are participants of one or more registered SDRs.[1105] The Commission recognizes that, since the publication of the Regulation SBSR Proposing Release, many persons who are likely to become participants of one or more registered SDRs already have LEIs issued by or through the GLEIS. As a result, the burdens and costs actually incurred by participants as a result of the adoption of Regulation SBSR are likely to be less than the burdens and costs calculated herein. Specifically, as discussed in further detail in Section XXII(C)(4)(b), *infra,* based on transaction data from DTCC–TIW, the Commission believes that no fewer than 3,500 of approximately 4,800 accounts that participated in the market for single-name CDS in 2013 currently have LEIs.[1106] The Commission assumes that no market participants that currently have LEIs would continue to maintain their LEIs in the absence of Rule 903(a) in order to arrive at an upper bound on the ongoing costs associated with Rule 903(a). The Commission believes that this is a conservative approach, since regulators in certain other jurisdictions mandate the use of an LEI.[1107] Consequently, the Commission estimates, for purposes of the PRA, that there may be as many as 1,300 participant respondents who will need to obtain an LEI and as many as 4,800 participants who will need to maintain an LEI.[1108]

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The Commission estimates that first-year aggregate burden imposed by Rule 903 will be 1,300 hours, which corresponds to 1 hour per participant, to account for the initial burdens of obtaining an LEI.[1109] The Commission estimates that the ongoing burden imposed by Rule 903 will be 4,800 hours, which corresponds to 1 hour per participant, to account for ongoing

[1102] *See* Regulation SBSR Proposing Release, 75 FR 75252–53.

[1103] *See* Cross-Border Proposing Release, 78 FR 31117.

[1104] *See supra* Section X(B)(2).

[1105] As noted in Section XXII(B)(1), *infra,* the available data do not include transactions between two foreign security-based swap market participants on foreign underlying reference entities. As a result, this estimate may not include certain foreign counterparties to security-based swaps.

[1106] Some counterparties reported in the transaction data may be guarantors of other non-U.S.-person-direct counterparties and, if so, may be responsible for obtaining and maintaining more than one LEI. As such, precisely quantifying the number of LEIs required by Rule 903(a) is not possible at this time. However, because many of these direct non-U.S.-person counterparties are likely from jurisdictions where regulators mandate the use of LEIs, the Commission believes that these counterparties will already have registered LEIs and will continue to maintain them.

[1107] The European Market Infrastructure Regulation requires use of codes to identify counterparties. *See* ''Trade Reporting'' (available at: *http://www.esma.europa.eu/page/Trade-reporting*) (last visited January 10, 2015).

[1108] In the Regulation SBSR Proposing Release, the Commission used an estimate of 5,000 participant respondents that might incur reporting duties under Regulation SBSR. This estimate included an estimated 1,000 entities regularly engaged in the CDS marketplace as well as 4,000 potential security-based swap counterparties that were expected to transact security-based swaps less frequently but that nonetheless would be considered ''participants.'' *See* Regulation SBSR Proposing Release, 75 FR 75254. Based on more recent data, the Commission has revised the estimated number of participant respondents to 4,800. The Commission notes that registered security-based swap dealers and major security-based swap participants will, for some transactions, be the non-reporting side and are therefore included in this estimate.

[1109] This figure is based on the following: [Compliance Attorney at 1 hour/year) × (1,300 participants)] = 1,300 burden hours.

administration of the LEI.[1110] In addition, for these participants, the assignment of an LEI will entail both one-time and ongoing costs assessed by local operation units (''LOUs'') of the GLEIS. The current cost for registering a new LEI is approximately $220, with an additional cost of $120 per year for maintaining an LEI.[1111] For those participants that do not already have an LEI, the initial one-time cost would be $286,000, or $220 per participant.[1112] All participants would be required to maintain their LEI resulting in an annual cost of $576,000, or $120 per participant.[1113]

5. Recordkeeping Requirements

The applications that participants must complete in order to obtain an LEI issued by or through the GLEIS are not subject to any specific recordkeeping requirements for participants, to the extent that these participants are non-registered persons.[1114] The Commission expects, however, that in the normal course of their business a participant of a registered SDR would keep records of the information entered in connection with its LEI application, such as the participant's legal name, registered address, headquarters address, and the entity's legal form.

6. Collection of Information Is Mandatory

Each collection of information discussed above is mandatory.

7. Confidentiality of Responses to Collection of Information

The Commission believes that information submitted by participants in order to obtain an LEI issued by or through the GLEIS generally will be public.

[1110] This figure is based on the following: [(Compliance Attorney at 1 hour/year) × (4,800 participants)] = 4,800 burden hours.

[1111] *See* ''GMEI Utility: Frequently Asked Questions'' (available at: *https://www.gmeiutility.org/frequentlyAskedQuestions.jsp*, detailing registration and maintenance costs for LEIs issued by GMEI, an endorsed pre-LOU of the interim GLEIS) (last visited January 4, 2015).

[1112] This figure is based on the following: [($220 registration cost) × (1,300 participants not currently registered)] = $286,000.

[1113] This figure is based on the following: [($120 annual maintenance cost) × (4,800 participants not currently registered)] = $576,000. The Commission notes that, for those participants obtaining an LEI in the first year, the annual maintenance cost will be incurred beginning in the year following registration.

[1114] *See* Securities Exchange Act Release No. 71958 (April 17, 2014), 79 FR 25193 (May 2, 2014) (''SD/MSP Recordkeeping Proposing Release'') (proposing recordkeeping and reporting requirements for security-based swap dealers, major security-based swap participants, and broker-dealers).

E. Operating Hours of Registered SDRs—Rule 904

Rule 904, as adopted, requires a registered SDR to have systems in place to continuously receive and disseminate information regarding security-based swap data with certain exceptions. Certain provisions of Rule 904 contain ''collection of information requirements'' within the meaning of the PRA. The title of this collection is ''Rule 904—Operating Hours of Registered SDRs.''

1. Summary of Collection of Information

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

Rule 904(c) specifies requirements for handling and disseminating reported data during a registered SDR's normal and special closing hours. During normal closing hours and, to the extent reasonably practicable, during special closing hours, a registered SDR is required to have the capability to receive and hold in queue transaction data it receives.[1115] Pursuant to Rule 904(d), immediately upon system re-opening, the registered SDR is required to publicly disseminate any transaction data required to be reported under Rule 901(c) that it received and held in queue, in accordance with the requirements of Rule 902. Pursuant to Rule 904(e), if a registered SDR cannot hold in queue transaction data to be reported, immediately upon re-opening the SDR is required to send a message to all participants that it has resumed normal operations. Thereafter, any participant that had an obligation to report transaction information to the registered SDR, but could not due to the registered SDR's inability to receive and hold in queue such transaction information, must promptly report the information to the registered SDR.[1116]

The Commission originally stated its belief that there were not any costs or burdens applicable to participants as a result of Rule 904(e).[1117] The Commission continues to believe that this conclusion is appropriate. Specifically, the Commission believes that the process by which the registered SDR will notify participants that it has resumed operations would be automated. As a result, the Commission believes that the costs associated with building out the systems necessary for such notifications have already been accounted for in the costs of developing the registered SDRs systems associated with the receipt of security-based swap information under Rule 901.[1118] As a result, the Commission continues to believe that Rule 904(e) is not a collection of information for participants.

2. Use of Information

The information provided pursuant to Rule 904 is necessary to allow participants and the public to know the normal and special closing hours of the registered SDR, and to allow participants to take appropriate action in the event that the registered SDR cannot accept security-based swap transaction reports from participants.[1119]

3. Respondents

Rule 904 applies to all registered SDRs. As noted above, the Commission estimates that there will be ten registered SDRs.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The Commission continues to estimate that that the one-time, initial burden, as well as ongoing annualized burden for each registered SDR associated with Rule 904 will be only minor additional burden beyond that necessary to ensure its basic operating capability under both Regulation SBSR and the SDR Registration Rules. The Commission estimates that the annual aggregate burden (first-year and ongoing) imposed by Rule 904 will be

[1115] *See* Rule 904(c).

[1116] *See* Rule 904(e).

[1117] *See* Regulation SBSR Proposing Release, 75 FR 75253.

[1118] *See id.*

[1119] The Commission does not believe that Rule 904(c) will result in any burden within the meaning of the PRA. Rule 904(c) does not create new or additional duties to report security-based swap transactions.

360 hours, which corresponds to 36 hours per registered SDR.[1120]

One commenter asserted that the proposed requirement for a registered SDR to receive and hold in the queue the data required to be reported during its closing hours ''exceeds the capabilities of currently-existing reporting infrastructures.'' [1121] However, the Commission notes that this comment was submitted in January 2011; since the receipt of this comment, provisionally registered CFTC SDRs that are likely also to register as SDRs with the Commission appear to have developed the capability of receiving and holding data in queue during their closing hours.[1122] Thus, the Commission continues to believe that requiring registered SDRs to hold data in queue during their closing hours would not create a significant burden for registered SDRs.

The Commission does not believe Rule 904 imposes any separate collection of information on participants of registered SDRs not already accounted for under Rule 901.[1123] Any respondent unable to report to a registered SDR, because such registered SDR was unable to receive the transaction report, would have to delay the submission of the transaction report. The Commission does not believe that the number of transaction reports impacted by this requirement would impact the burdens contained in this PRA.

5. Recordkeeping Requirements

Rule 13n–7(b) under the Exchange Act requires an SDR to keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available to representatives of the Commission for inspection and examination.[1124] This requirement encompasses notices issued by a registered SDR to its participants under Rule 904.

6. Collection of Information Is Mandatory

Each collection of information discussed above is mandatory.

7. Confidentiality of Responses to Collection of Information

Any notices issued by a registered SDR to its participants, such as the notices required under Rule 904, would be publicly available.

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

Rule 905, as adopted, establishes procedures for correcting errors in reported and disseminated security-based swap information.

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

1. Summary of Collection of Information

Rule 905 establishes duties for security-based swap counterparties and registered SDRs to correct errors in information that previously has been reported.

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

Duty of Registered SDR to Correct. Rule 905(b) sets forth the duties of a registered SDR relating to corrections. If the registered SDR either discovers an error in a transaction on its system or receives notice of an error from a reporting side, Rule 905(b)(1) requires the registered SDR to verify the accuracy of the terms of the security-based swap and, following such verification, promptly correct the erroneous information contained in its system. Rule 905(b)(2) further requires that, if such erroneous information relates to a security-based swap that the registered SDR previously disseminated and falls into any of the categories of information enumerated in Rule 901(c), the registered SDR must publicly disseminate a corrected transaction report of the security-based swap promptly following verification of the trade by the counterparties to the security-based swap, with an indication that the report relates to a previously disseminated transaction.

2. Use of Information

The security-based swap transaction information required to be reported pursuant to Rule 905 will be used by registered SDRs, participants, the Commission, and other relevant authorities. Participants will be able to use such information to evaluate and manage their own risk positions and satisfy their duties to report corrected information to a registered SDR. A registered SDR will need the required information to correct security-based swap transaction records, in order to maintain an accurate record of a participant's positions as well as to disseminate corrected information. The Commission and other relevant authorities will need the corrected information to have an accurate understanding of the market for surveillance and oversight purposes.

3. Respondents

Rule 905 applies to all participants of registered SDRs. As noted above, the Commission estimates that there will be approximately 300 reporting sides that incur the duty to report security-based swap transactions pursuant to Rule 901. In addition, the Commission estimates that there may be up to 4,800 security-based swap counterparties that are participants of one or more registered SDRs. Because any of these counterparties who are participants could become aware of errors in their reported transaction data, the Commission estimates that there may be as many as 4,800 respondents for purposes of the PRA.

Rule 905 also applies to registered SDRs. As noted above, the Commission estimates there will be ten registered SDRs.

[1120] *See* Regulation SBSR Proposing Release, 75 FR 75253. This figure is based on the following: [(Operations Specialist at 3 hours/month) × (12 months/year) × (10 registered SDRs)] = 360 burden hours.

[1121] Markit I at 4.

[1122] *See, e.g.,* DDR Rulebook, Section 7.1 (DDR System Accessibility) (''Data submitted during DDR System down time is stored and processed once the service has resumed''), available at *http://www.dtcc.com/~/media/Files/Downloads/legal/rules/DDR_Rulebook.pdf* (last visited October 7, 2014).

[1123] The requirement in Rule 904(e) for participants to report information to the registered SDR upon receiving a notice that the registered SDR resumed its normal operations is already considered as part of the participant's reporting obligations under Rule 901 and thus is already included in the burden estimate for Rule 901.

[1124] *See* SDR Adopting Release, Section VI(G)(2)

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The duty to promptly submit amended transaction reports to the appropriate registered SDR after discovery of an error, as required under Rule 905(a)(2), will impose burdens on reporting sides. The duty to promptly notify the relevant reporting side after discovery of an error, as required under Rule 905(a)(1), will impose burdens on non-reporting-side participants.

With respect to reporting sides, the Commission believes that Rule 905(a) will impose an initial, one-time burden associated with designing and building the reporting side's reporting system to be capable of submitting amended security-based swap transactions to a registered SDR. The Commission believes that designing and building appropriate reporting system functionality to comply with Rule 905(a)(2) will be a component of, and represent an incremental ''add-on'' to, the cost to build a reporting system and develop a compliance function as required under Rule 901. Based on discussions with industry participants, the Commission estimates this incremental burden to be equal to 5% of the one-time and annual burdens associated with designing and building a reporting system that is in compliance with Rule 901, plus 10% of the corresponding one-time and annual burdens associated with developing the reporting side's overall compliance program required under Rule 901. This estimate is based on similar calculations contained in the Regulation SBSR Proposing Release,[1125] updated to reflect new estimates relating to the number of reportable events and the number of reporting sides. Thus, for reporting sides, the Commission estimates that Rule 905(a) will impose an initial (first-year) aggregate burden of 15,015 hours, which is 50.0 burden hours per reporting side,[1126] and an ongoing aggregate annualized burden of 7,035 hours, which is 23.5 burden hours per reporting side.[1127]

The Commission believes that the actual submission of amended transaction reports required under Rule 905(a)(2) will not result in a material burden because this will be done electronically though the reporting system that the reporting side must develop and maintain to comply with Rule 901. The overall burdens associated with such a reporting system are addressed in the Commission's analysis of Rule 901.

With regard to non-reporting-side participants, the Commission believes that Rule 905(a) will impose an initial and ongoing burden associated with promptly notifying the relevant reporting party after discovery of an error as required under Rule 905(a)(1). The Commission estimates that the annual burden will be 998,640 hours, which corresponds to 208.05 burden hours per non-reporting-side participant.[1128] This figure is based on the Commission's estimate of (1) 4,800 participants; and (2) 1 transaction per day per non-reporting-side participant.[1129] The burdens of Rule 905 on reporting sides and non-reporting-side participants will be reduced to the extent that complete and accurate information is reported to registered SDRs in the first instance pursuant to Rule 901.

Rule 905(b) requires a registered SDR to develop protocols regarding the reporting and correction of erroneous information. The Commission believes, however, that this duty would represent only a minor extension of other duties for which the Commission is estimating burdens, and consequently, will not impose substantial additional burdens on a registered SDR. A registered SDR will be required to have the ability to collect and maintain security-based swap transaction reports and update relevant records under the rules adopted in the SDR Adopting Release. Likewise, a registered SDR must have the capacity to disseminate additional, corrected security-based swap transaction reports under Rule 902. The burdens associated with Rule 905—including systems development, support, and maintenance—are addressed in the Commission's analysis of those other rules. Thus, the Commission believes that Rule 905(b) will impose only an incremental additional burden on registered SDRs. The Commission estimates that developing and publicly providing the necessary procedures will impose on each registered SDR an initial one-time burden on each registered SDR of approximately 730 burden hours.[1130] The Commission estimates that to review and update such procedures on an ongoing basis will impose an annual burden on each SDR of approximately 1,460 burden hours.[1131]

Accordingly, the Commission estimates that the initial (first-year) aggregate annualized burden on registered SDRs under Rule 905 will be 21,900 burden hours, which corresponds to 2,190 burden hours for each registered SDR.[1132] The Commission further estimates that the ongoing aggregate annualized burden on registered SDRs under Rule 905 will be 14,600 burden hours, which corresponds to 1,460 burden hours for each registered SDR.[1133] This estimated burden is consistent with what the Commission proposed in the Regulation SBSR Proposing Release.

5. Recordkeeping Requirements

Security-based swap transaction reports received pursuant to Rule 905 are subject to Rule 13n–5(b)(4) under the Exchange Act. This rule requires an SDR to maintain the transaction data and related identifying information for not less than five years after the

[1125] *See* Regulation SBSR Proposing Release, 75 FR 75254.

[1126] *See* Regulation SBSR Proposing Release, 75 FR 75254–55. This figure is calculated as follows: [(((172 burden hours for one-time development of reporting system) × (0.05)) + ((33 burden hours annual maintenance of reporting system) × (0.05)) + ((180 burden hours one-time compliance program development) × (0.1)) + ((218 burden hours annual support of compliance program) × (0.1))) × (300 reporting sides)] = 15,015 burden hours, which is 50 burden hours per reporting side. The burden hours for annual maintenance of the reporting system has been updated to reflect new information on the number of reportable events. *See supra* note 1075.

[1127] *See* Regulation SBSR Proposing Release, 75 FR 75254–55. This figure is calculated as follows: [(((33 burden hours annual maintenance of reporting system) × (0.05)) + ((218 burden hours annual support of compliance program) × (0.1))) × (300 reporting sides)] = 7,035 burden hours, which is 23.5 burden hours per reporting side. The burden hours for annual maintenance of the reporting system has been updated to reflect new information on the number of reportable events. *See supra* note 1075.

[1128] This burden was calculated using the same methodology as was used in the Regulation SBSR Proposing Release, updated to account for new estimates of the number of error notifications resulting from updates in the number of reportable events. *See* Regulation SBSR Proposing Release, 75 FR 75255. This figure is based on the following: [(1.14 error notifications per non-reporting-side participant per day) × (365 days/year) × (Compliance Clerk at 0.5 hours/report) × (4,800 participants)] = 998,640 burden hours, which corresponds to 208.05 burden hours per non-reporting-side participant.

[1129] This figure is based on the following: [((2,000,000 estimated annual security-based swap transactions) / (4,800 participants)) / (365 days/year)] = 1.14 transactions per day, on average.

[1130] *See* Regulation SBSR Proposing Release, 75 FR 75255. This figure is based on the following: [(Sr. Programmer at 80 hours) + (Compliance Manager at 160 hours) + (Compliance Attorney at 250 hours) + (Compliance Clerk at 120 hours) + (Sr. System Analyst at 80 hours) + (Director of Compliance at 40 hours)] = 730 burden hours.

[1131] *See* Regulation SBSR Proposing Release, 75 FR 75255. This figure is based on the following: [(Sr. Programmer at 160 hours) + (Compliance Manager at 320 hours) + (Compliance Attorney at 500 hours) + (Compliance Clerk at 240 hours) + (Sr. System Analyst at 160 hours) + (Director of Compliance at 80 hours)] = 1,460 burden hours.

[1132] This figure is based on the following: [(730 burden hours to develop protocols) + (1,460 burden hours annual support)) × (10 registered SDRs)] = 21,900 burden hours, which corresponds to 2,190 burden hours per registered SDR.

[1133] This figure is based on the following: [(1,460 burden hours annual support) × (10 registered SDRs)] = 14,600 burden hours, which corresponds to 1,460 burden hours per registered SDR.

applicable security-based swap expires and historical positions for not less than five years.[1134]

With respect to information disseminated by a registered SDR in compliance with Rule 905(b)(2), Rule 13n–7(b) under the Exchange Act requires an SDR to keep and preserve at least one copy of all documents, including all policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available to representatives of the Commission for inspection and examination.[1135] This requirement encompasses amended security-based swap transaction reports disseminated by the registered SDR.

6. Collection of Information Is Mandatory

Each collection of information discussed above is mandatory.

7. Confidentiality of Responses to Collection of Information

Information collected pursuant to Rule 905 will be widely available to the extent that it corrects information previously reported pursuant to Rule 901(c) and incorporated into security-based swap transaction reports that are publicly disseminated by a registered SDR pursuant to Rule 902. Most of the information required under Rule 902 will be widely available to the public to the extent it is incorporated into security-based swap transaction reports that are publicly disseminated by a registered SDR pursuant to Rule 902. However, Rule 902(c) prohibits public dissemination of certain kinds of transactions and certain kinds of transaction information. An SDR, pursuant to Sections 13(n)(5) of the Exchange Act and Rules 13n–4(b)(8) and 13n–9 thereunder is required to maintain the privacy of this security-based swap information. To the extent that the Commission receives confidential information pursuant to this collection of information, such information will be kept confidential, subject to the provisions of applicable law.

G. Other Duties of Participants—Rule 906

Rule 906(a), as adopted, establishes procedures designed to ensure that a registered SDR obtains UICs for both counterparties to a security-based swap. Rule 906(b) requires each participant of a registered SDR to provide to the registered SDR information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered SDR. Rule 906(c) requires each participant that is a registered security-based swap dealer or registered major security-based swap participant to establish, maintain, and enforce written policies and procedures (updated at least annually) that are reasonably designed to ensure compliance with any security-based swap transaction reporting obligations in a manner consistent with Regulation SBSR.

Certain provisions of Rule 906 of Regulation SBSR contain ''collection of information requirements'' within the meaning of the PRA. The title of this collection is ''Rule 906—Duties of All Participants.''

Although the Commission is adopting Rule 906 with certain minor changes from the version re-proposed in the Cross-Border Proposing Release, these changes do not increase the number of respondents to Rule 906 or affect the estimated burdens on respondents to Rule 906. Therefore, the Commission is not revising its estimate of the burdens associated with Rule 906.

1. Summary of Collection of Information

Rule 906(a) sets forth a procedure designed to ensure that a registered SDR obtains relevant UICs for both sides of a security-based swap, not just of the reporting side. Rule 906(a) requires a registered SDR to identify any security-based swap reported to it for which the registered SDR does not have a counterparty ID and (if applicable) broker ID, trading desk ID, and trader ID of each counterparty. Rule 906(a) further requires the registered SDR, once a day, to send a report to each participant identifying, for each security-based swap to which that participant is a counterparty, the security-based swap(s) for which the registered SDR lacks counterparty ID and (if applicable) broker ID, trading desk ID, and trader ID. A participant that receives such a report must provide the missing ID information to the registered SDR within 24 hours.

Rule 906(b) requires each participant of a registered SDR to provide the registered SDR with information sufficient to identify the participant's ultimate parent(s) and any affiliate(s) of the participant that are also participants of the registered SDR.

Rule 906(c) requires each participant that is a registered security-based swap dealer or registered major security-based swap participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any security-based swap transaction reporting obligations in a manner consistent with Regulation SBSR. In addition, Rule 906(c) requires each such participant to review and update its policies and procedures at least annually.

2. Use of Information

The information required to be provided by participants pursuant to Rule 906(a) will complete missing elements of security-based swap transaction reports so that the registered SDR has, and can make available to the Commission and other relevant authorities, accurate and complete records for reported security-based swaps.

Rule 906(b) will be used to ensure that the registered SDR has, and can make available to the Commission and other relevant authorities, group-wide security-based swap position information. This information will assist the Commission and other relevant authorities with monitoring systemic risks in the security-based swap market.

The policies and procedures required under Rule 906(c) will be used by participants to aid in their compliance with Regulation SBSR, and also used by the Commission as part of its ongoing efforts to monitor and enforce compliance with the federal securities laws, including Regulation SBSR.

3. Respondents

Rules 906(a) and 906(b) apply to all participants of registered SDRs. Based on the information currently available to the Commission, the Commission now believes that there may be up to 4,800 participants.[1136] Rule 906(c) applies to participants that are registered security-based swap dealers or registered major security-based swap participants. The Commission estimates that there will be 55 registered security-based swap dealers and registered major security-based swap dealers.

Rule 906 also imposes certain duties on registered SDRs. As noted above, the Commission estimates that there will be ten registered SDRs.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

a. For Registered SDRs

Rule 906(a) requires a registered SDR, once a day, to send a report to each participant identifying, for each security-based swap to which that

[1134] *See* SDR Adopting Release, Section VI(E)(4).

[1135] *See* SDR Adopting Release, Section VI(G)(2).

[1136] The Commission originally estimated that there would be up to 5,000 participants. As discussed above, based on more updated and granular information available to the Commission, this estimate has been revised. *See* Regulation SBSR Proposing Release, 75 FR 75256.

participant is a counterparty, any security-based swap(s) for which the registered SDR lacks counterparty ID and (if applicable) broker ID, trading desk ID, and trader ID. The Commission estimates that there will be a one-time, initial burden of 112 burden hours for a registered SDR to create a report template and develop the necessary systems and processes to produce a daily report required by Rule 906(a).[1137] Further, the Commission estimates that there will be an ongoing annualized burden of 308 burden hours for a registered SDR to generate and issue the daily reports, and to enter into its systems the ID information supplied by participants in response to the daily reports.[1138]

Accordingly, the Commission estimates that the initial aggregate annualized burden for registered SDRs under Rule 906(a) will be 4,200 burden hours for all SDR respondents, which corresponds to 420 burden hours per registered SDR.[1139] The Commission estimates that the ongoing aggregate annualized burden for registered SDRs under Rule 906(a) will be 3,080 burden hours, which corresponds to 308 burden hours per registered SDR.[1140]

b. For Participants

i. Rule 906(a)

Rule 906(a) requires any participant of a registered SDR that receives a report from that registered SDR to provide the missing UICs to the registered SDR within 24 hours. Because all SDR participants will likely be the non-reporting side for at least some transactions to which they are a counterparty, the Commission believes that all participants will be impacted by Rule 906(a). The Commission estimates that the initial and ongoing annualized burden under Rule 906(a) for all participants will be 199,728 burden hours, which corresponds to 41.6 burden hours per participant.[1141] This figure is based on the Commission's estimates of (1) 4,800 participants; and (2) approximately 1.14 transactions per day per participant.[1142]

ii. Rule 906(b)

Rule 906(b) requires every participant to provide the registered SDR an initial parent/affiliate report and subsequent reports, as needed. The Commission estimates that there will be 4,800 participants, that each participant will connect to two registered SDRs on average, and that each participant will submit two reports each year.[1143] Accordingly, the Commission estimates that the initial and ongoing aggregate annualized burden associated with Rule 906(b) will be 9,600 burden hours, which corresponds to 2 burden hours per participant.[1144] The aggregate burden represents an upper estimate for all participants; the actual burden will likely decrease because certain larger participants are likely to have multiple affiliates, and one member of the group could report ultimate parent and affiliate information on behalf of all of its affiliates at the same time.

b. For Covered Participants

Rule 906(c) requires each participant that is a registered security-based swap dealer or registered major security-based swap participant (each, a ''covered participant'') to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any security-based swap transaction reporting obligations in a manner consistent with Regulation. Rule 906(c) also requires the review and updating of such policies and procedures at least annually. The Commission estimates that the one-time, initial burden for each covered participant to adopt written policies and procedures as required under Rule 906(c) will be approximately 216 burden hours.[1145] As discussed in the Regulation SBSR Proposing Release,[1146] this figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing. In addition, the Commission estimates the burden of maintaining such policies and procedures, including a full review at least annually, as required by Rule 906(c), will be approximately 120 burden hours for each covered participant.[1147] This figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining internal controls systems, and performing necessary testing. Accordingly, the Commission estimates that the initial aggregate annualized burden associated with Rule 906(c) will be 18,480 burden hours, which corresponds to 336 burden hours per covered participant.[1148] The Commission estimates that the ongoing aggregate annualized burden associated with Rule 906(c) will be 6,600 burden hours, which corresponds to 120 burden hours per covered participant.[1149]

Therefore, the Commission estimates that the total initial aggregate annualized burden associated with Rule 906 will be 232,008 burden hours,[1150]

[1137] *See* Regulation SBSR Proposing Release, 75 FR 75256. The Commission has derived the total estimated burdens based on the following estimates, which are based on the information provided to the Commission: (Senior Systems Analyst at 40 hours) + (Sr. Programmer at 40 hours) + (Compliance Manager at 16 hours) + (Director of Compliance at 8 hours) + (Compliance Attorney at 8 hours) = 112 burden hours.

[1138] *See* Regulation SBSR Proposing Release, 75 FR 75256–57. The Commission has derived the total estimated burdens based on the following estimates, which are based on the information provided to the Commission: (Senior Systems Analyst at 24 hours) + (Sr. Programmer at 24 hours) + (Compliance Clerk at 260 hours) = 308 burden hours.

[1139] *See* Regulation SBSR Proposing Release, 75 FR 75256–57. The Commission derived its estimate from the following: [(112 + 308 burden hours) × (10 registered SDRs)] = 4,200 burden hours, which corresponds to 420 burden hours per registered SDR.

[1140] *See* Regulation SBSR Proposing Release, 75 FR 75256–57. The Commission derived its estimate from the following: [(308 burden hours) × (10 registered SDRs)] = 3,080 burden hours, which corresponds to 308 burden hours per registered SDR.

[1141] This burden was calculated using the same methodology as was used in the Regulation SBSR Proposing Release, updated to account for new estimates of the number of missing information reports resulting from updates in the number of reportable events. *See* Regulation SBSR Proposing Release, 75 FR 75256–57. This figure is based on the following: [(1.14 missing information reports per participant per day) × (365 days/year) × (Compliance Clerk at 0.1 hours/report) × (4,800 participants) = 199,728 burden hours, which corresponds to 41.6 burden hours per participant.

[1142] This figure is based on the following: [((2,000,000 estimated annual security-based swap transactions) / 4,800 participants)) / (365 days/year)] = 1.14 transactions per day, or approximately 1 transaction per day.

[1143] The Commission estimates that, during the first year, each participant will submit an initial report and one update report and, in subsequent years, will submit two update reports.

[1144] *See* Regulation SBSR Proposing Release, 75 FR 75257. This figure is based on the following: [(Compliance Clerk at 0.5 hours per report) × (2 reports/year/SDR connection) × (2 SDR connections/participant) × (4,800 participants)] = 9,600 burden hours, which corresponds to 2 burden hours per participant.

[1145] *See* Regulation SBSR Proposing Release, 75 FR 75257. This figure is based on the following: [(Sr. Programmer at 40 hours) + (Compliance Manager at 40 hours) + (Compliance Attorney at 40 hours) + (Compliance Clerk at 40 hours) + (Sr. Systems Analyst at 32 hours) + (Director of Compliance at 24 hours)] = 216 burden hours per covered participant.

[1146] *See* Regulation SBSR Proposing Release, 75 FR 75257.

[1147] *See* Regulation SBSR Proposing Release, 75 FR 75257. This figure is based on the following: [(Sr. Programmer at 8 hours) + (Compliance Manager at 24 hours) + (Compliance Attorney at 24 hours) + (Compliance Clerk at 24 hours) + (Sr. Systems Analyst at 16 hours) + (Director of Compliance at 24 hours)] = 120 burden hours per covered participant.

[1148] This figure is based on the following: [(216 + 120 burden hours) × (55 covered participants)] = 18,480 burden hours.

[1149] This figure is based on the following: [(120 burden hours) × (55 covered participants)] = 6,600 burden hours.

[1150] This figure is based on the following: [(4,200 burden hours for registered SDRs under Rule 906(a)) + (199,728 burden hours for participants

and the total ongoing aggregate annualized burden will be 219,008 burden hours for all participants.[1151]

5. Recordkeeping Requirements

The daily reports that participants complete in order to provide missing UICs to a registered SDR pursuant to Rule 906(a) and the initial parent/affiliate reports and subsequent reports required by Rule 906(b) are not subject to any specific recordkeeping requirements for participants to the extent that these participants are non-registered persons.[1152] With regard to these reports, as well as any other information that a registered SDR may receive from participants pursuant to Rule 906, Rule 13n–5(b)(4) requires an SDR to maintain this information for not less than five years after the applicable security-based swap expires.[1153]

The Commission has proposed but not yet adopted recordkeeping requirements for registered security-based swap dealers and registered major security-based swap participants.[1154]

6. Collection of Information Is Mandatory

Each collection of information discussed above is mandatory.

7. Confidentiality of Responses to Collection of Information

The collection of information required by Rule 906 will not be widely available. To the extent that the Commission receives confidential information pursuant this collection of information, such information will be kept confidential, subject to applicable law.

H. Policies and Procedures of Registered SDRs—Rule 907

Rule 907, as adopted, requires each registered SDR to establish and maintain policies and procedures addressing various aspects of Regulation SBSR compliance. Certain provisions of Rule 907 of Regulation SBSR contain ''collection of information requirements'' within the meaning of the PRA. The title of this collection is ''Rule 907—Policies and Procedures of Registered SDRs.''

1. Summary of Collection of Information

Rule 907(a) requires a registered SDR to establish and maintain written policies and procedures that detail how it will receive and publicly disseminate security-based swap transaction information. Rule 907(a)(4) requires policies and procedures for assigning ''special circumstances'' flags to the necessary transaction reports.

Rule 907(c) requires a registered SDR to make its policies and procedures available on its Web site. Rule 907(d) requires a registered SDR to review, and update as necessary, the policies and procedures that it is required to have by Regulation SBSR at least annually. Rule 907(e) requires a registered SDR to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to Regulation SBSR and the registered SDR's policies and procedures established thereunder.

2. Use of Information

The policies and procedures required under Rules 907(a) and 907(b) will be used by reporting sides to understand the specific data elements of security-based swap transactions that they must report and the specific data formats and other reporting protocols that they will be required to use. These policies and procedures will be used generally by registered SDRs to aid in their compliance with Regulation SBSR, and also by the Commission as part of its ongoing efforts to monitor and enforce compliance with the federal securities laws, including Regulation SBSR. Finally, any information or reports provided to the Commission pursuant to Rule 907(e) will be used by the Commission to assess the timeliness, accuracy, and completeness of reported transaction data and assist the Commission's efforts to enforce applicable security-based swap reporting rules.

3. Respondents

Rule 907 applies to registered SDRs. As noted above, the Commission estimates that there will be ten registered SDRs.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The Commission estimates that the one-time, initial burden for a registered SDR to adopt written policies and procedures as required under Rule 907 will be approximately 15,000 hours.[1155] As discussed in the Regulation SBSR Proposing Release, this figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing.[1156] In addition, the Commission estimates the annual burden of maintaining such policies and procedures, including a full review at least annually, making available its policies and procedures on the registered SDR's Web site, and information or reports on non-compliance, as required under Rule 907(e), will be approximately 30,000 hours for each registered SDR.[1157] As discussed in the Regulation SBSR Proposing Release, this figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining relevant systems and internal controls systems, performing necessary testing, monitoring participants, and compiling data.

The Commission estimates that the initial annualized burden associated with Rule 907 will be approximately 45,000 hours per registered SDR, which corresponds to an initial annualized aggregate burden of approximately 450,000 hours.[1158] The Commission

under Rule 906(a)) + (9,600 burden hours for participants under Rule 906(b)) + (18,480 burden hours for covered participants under Rule 906(c))] = 232,008 burden hours.

[1151] This figure is based on the following: [(3,080 burden hours for registered SDRs under proposed Rule 906(a)) + (199,728 burden hours for participants under proposed Rule 906(a)) + (9,600 burden hours for participants under proposed Rule 906(b)) + (6,600 burden hours for covered participants under proposed Rule 906(c))] = 219,008 burden hours.

[1152] *See* Securities Exchange Act Release No. 71958 (April 17, 2014), 79 FR 25193 (May 2, 2014) (''SD/MSP Recordkeeping Proposing Release'') (proposing recordkeeping and reporting requirements for security-based swap dealers, major security-based swap participants, and broker-dealers).

[1153] *See* SDR Adopting Release, Section VI(E)(4).

[1154] *See* SD/MSP Recordkeeping Proposing Release, 79 FR 25193.

[1155] *See* Regulation SBSR Proposing Release, 75 FR 75259. This figure is based on the following: [(Sr. Programmer at 1,667 hours) + (Compliance Manager at 3,333 hours) + (Compliance Attorney at 5,000 hours) + (Compliance Clerk at 2,500 hours) + (Sr. System Analyst at 1,667 hours) + (Director of Compliance at 833 hours)] = 15,000 burden hours per registered SDR. These burdens are the result of Rule 907 only and do not account for any burdens that result from the SDR Rules. Such burdens are addressed in a separate release. *See* SDR Adopting Release, Section VII.

[1156] *See* Regulation SBSR Proposing Release, 75 FR 75259. This figure also includes time necessary to design and program systems and implement policies and procedures to assign certain UICs, as required by Rule 907(a)(5).

[1157] *See* Regulation SBSR Proposing Release, 75 FR 75259. This figure is based on the following: [(Sr. Programmer at 3,333 hours) + (Compliance Manager at 6,667 hours) + (Compliance Attorney at 10,000 hours) + (Compliance Clerk at 5,000 hours) + (Sr. System Analyst at 3,333 hours) + (Director of Compliance at 1,667 hours)] = 30,000 burden hours per registered SDR.

[1158] This figure is based on the following: [((15,000 burden hours per registered SDR) + (30,000 burden hours per registered SDR)) × (10 registered SDRs)] = 450,000 initial annualized aggregate burden hours during the first year.

estimates that the ongoing annualized burden associated with Rule 907 will be approximately 30,000 hours per registered SDR,[1159] which corresponds to an ongoing annualized aggregate burden of approximately 300,000 hours.[1160]

5. Recordkeeping Requirements

Rule 13n–7(b) under the Exchange Act requires an SDR to keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available to representatives of the Commission for inspection and examination. This requirement will encompass policies and procedures established by a registered SDR pursuant to Rule 907, and any information or reports provided to the Commission pursuant to Rule 907(e).

6. Collection of Information Is Mandatory

Each collection of information discussed is mandatory.

7. Confidentiality of Responses to Collection of Information

All of the policies and procedures required by Rule 907 will have to be made available by a registered SDR on its Web site and will not, therefore, be confidential. Any information obtained by the Commission from a registered SDR pursuant to Rule 907(e) relating to the timeliness, accuracy, and completeness of data reported to the registered SDR will be kept confidential subject to the provisions of applicable law.

I. Cross-Border Matters—Rule 908

Rule 908(a), as adopted, defines when a security-based swap transaction will be subject to regulatory reporting and/or public dissemination. Specifically, Rule 908(a)(1)(i), as adopted, provides that a security-based swap shall be subject to regulatory reporting and public dissemination if ''[t]here is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction.'' Rule 908(a)(1)(ii), as adopted, provides that a security-based swap shall be subject to regulatory reporting and public dissemination if ''[t]he security-based swap is submitted to a clearing agency having its principal place of business in the United States.'' Rule 908(a)(2), as adopted, provides that a security-based swap not included within the above provisions would be subject to regulatory reporting but not public dissemination ''if there is a direct or indirect counterparty on either or both sides of the transaction that is a registered security-based swap dealer or a registered major security-based swap participant.''

Regulation 908(b), as adopted, defines when a person might incur obligations under Regulation SBSR. Specifically, Rule 908(b) provides that, notwithstanding any other provision of Regulation SBSR, a person shall not incur any obligation under Regulation SBSR unless it is a U.S. person, a registered security-based swap dealer or registered major security-based swap participant.

Rules 908(a) and 908(b) do not impose any collection of information requirements. To the extent that a security-based swap transaction or counterparty is subject to Rule 908(a) or 908(b), respectively, the collection of information burdens are calculated as part of the underlying rule (*e.g.,* Rule 901, which imposes the basic duty to report security-based swap transaction information).

Rule 908(c), as adopted, sets forth the requirements surrounding requests for substituted compliance. As adopted, Rule 908(c)(1) sets forth the general rule that compliance with the regulatory reporting and public dissemination requirements in sections 13(m) and 13A of the Act (15 U.S.C. 78m(m) and 78m–1), and the rules and regulations thereunder, may be satisfied by compliance with the rules of a foreign jurisdiction that is the subject of a Commission order described in Rule 908(c)(2), provided that at least one of the direct counterparties is either a non-U.S. person or a foreign branch.

Rule 908(c) contains ''collection of information requirements'' within the meaning of the PRA. The title of this collection is ''Rule 908(c)—Substituted Compliance.''

1. Summary of Collection of Information

A party that potentially would comply with requirements under Regulation SBSR pursuant to a substituted compliance order or any foreign financial regulatory authority or authorities supervising such a person's security-based swap activities, may file an application requesting that the Commission make a substituted compliance determination pursuant to Rule 0–13 under the Exchange Act.[1161] Such entity will be required to provide the Commission with any supporting documentation as the Commission may request, in addition to information that the entity believes is necessary for the Commission to make a determination, such as information demonstrating that the requirements applied in the foreign jurisdiction are comparable to the Commission's and describing the methods used by relevant foreign financial regulatory authorities to monitor compliance with those requirements.

2. Use of Information

The Commission will use the information collected pursuant to Rule 908(c)(2)(ii) to evaluate requests for substituted compliance with regard to regulatory reporting and public dissemination of security-based swaps.

3. Respondents

In the Cross-Border Proposing Release, the Commission preliminarily estimated that requests for substituted compliance determinations might arise in connection with security-based swap market participants and transactions in up to 30 discrete jurisdictions.[1162] Because only a small number of jurisdictions have substantial OTC derivatives markets and are implementing OTC derivatives reforms, the Commission preliminarily estimated that it would receive approximately ten requests in the first year for substituted compliance determinations with respect to regulatory reporting and public dissemination pursuant to Rule 908(c)(2)(ii), and two requests each subsequent year.[1163] Although the range of entities that are allowed to submit applications for substituted compliance has increased, the Commission does not believe that this warrants a change in its estimate of the number of requests that the Commission will receive. The Commission continues to believe that other considerations will determine the number of applications that it will receive, such as which jurisdictions have regulatory structures similar enough to the Commission's as to merit

[1159] *See* Regulation SBSR Proposing Release, 75 FR 75259. This figure is based on the following: [(Sr. Programmer at 3,333 hours) + (Compliance Manager at 6,667 hours) + (Compliance Attorney at 10,000 hours) + (Compliance Clerk at 5,000 hours) + (Sr. System Analyst at 3,333 hours) + (Director of Compliance at 1,667 hours)] = 30,000 burden hours per registered SDR.

[1160] *See* Regulation SBSR Proposing Release, 75 FR 75259. This figure is based on the following: [(30,000 burden hours per registered SDR) × (10 registered SDRs)] = 300,000 ongoing, annualized aggregate burden hours.

[1161] *See* 17 CFR 200.0–13; Cross-Border Adopting Release, 79 FR 47357–60.

[1162] *See* Cross-Border Proposing Release, 78 FR 31109–10.

[1163] *See id.* at 31110. Rule 908(c)(2)(ii), as adopted, allows ''[a] party that potentially would comply with requirements under [Regulation SBSR] . . . or any foreign financial regulatory authority or authorities supervising such a person's security-based swap activities may file an application.''

a request and the number of entities potentially impacted by Regulation SBSR.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

Rule 908(c)(2)(ii), as adopted, applies to any person that requests a substituted compliance determination with respect to regulatory reporting and public dissemination of security-based swaps. In connection with each request, the requesting party must provide the Commission with any supporting documentation that the entity believes is necessary for the Commission to make a determination, including information demonstrating that the requirements applied in the foreign jurisdiction are comparable to the Commission's and describing the methods used by relevant foreign financial regulatory authorities to monitor compliance with those requirements. The Commission initially estimated, in the Cross-Border Proposing Release, that the total paperwork burden associated with submitting a request for a substituted compliance determination with respect to regulatory reporting and public dissemination will be approximately 1,120 hours, plus $1,120,000 for 14 requests.[1164] This estimate includes all collection burdens associated with the request, including burdens associated with analyzing whether the regulatory requirements of the foreign jurisdiction impose a comparable, comprehensive system for the regulatory reporting and public dissemination of all security-based swaps. Furthermore, this estimate assumes that each request will be prepared *de novo,* without any benefit of prior work on related subjects. The Commission notes, however, that as such requests are developed with respect to certain jurisdictions, the cost of preparing such requests with respect to other foreign jurisdictions could decrease.[1165]

Assuming ten requests in the first year, the Commission staff estimated an aggregated burden for the first year will be 800 hours, plus $800,000 for the services of outside professionals.[1166] The Commission preliminarily estimated that it would receive 2 requests for substituted compliance determinations pursuant to Rule 908(c)(2)(ii) in each subsequent year. Assuming the same approximate time and costs, the aggregate burden for each year following the first year will be up to 160 hours of company time and $160,000 for the services of outside professionals.[1167]

5. Recordkeeping Requirements

Rule 908(c)(2)(ii) does not impose any recordkeeping requirements on entities that submit requests for a substituted compliance determination. The Commission has proposed but not yet adopted recordkeeping requirements for registered security-based swap dealers.

6. Collection of Information Is Mandatory

The collection of information discussed above is mandatory for any entity seeking a substituted compliance determination from the Commission regarding regulatory reporting and public dissemination of security-based swaps.

7. Confidentiality of Responses to Collection of Information

The Commission generally intends to make public the information submitted to it pursuant to any request for a substituted compliance determination under Rule 908(c)(2)(ii), including supporting documentation provided by the requesting party. However, a requesting party may submit a confidential treatment request pursuant to Rule 24b–2 under the Exchange Act to object to public disclosure.

J. Registration of SDRs as Securities Information Processors—Rule 909

Rule 909 requires a registered SDR also to register with the Commission as a SIP on Form SDR. Previously, in the Regulation SBSR Proposing Release, the Commission had proposed the use of a separate form, Form SIP. Based on the use of that form, the Commission stated in the Regulation SBSR Proposing Release that Rule 909 contained ''collection of information requirements'' within the meaning of the PRA and thus, the Commission preliminarily estimated certain burdens on registered SDRs that would result from Rule 909.[1168] As a result of the consolidation of SDR and SIP registration on a single form, the Commission now believes that Rule 909 does not constitute a separate ''collection of information'' within the meaning of the PRA.[1169]

XXII. Economic Analysis

The Commission is sensitive to the economic consequences and effects, including costs and benefits, of its rules. Some of these costs and benefits stem from statutory mandates, while others are affected by the discretion exercised in implementing the mandates. The following economic analysis identifies and considers the costs and benefits—including the effects on efficiency, competition, and capital formation—that may result from the rules, as adopted . These costs and benefits are discussed below and have informed the policy choices described throughout this release.

The Dodd-Frank Act amended the Exchange Act to require the regulatory reporting and public dissemination of all security-based swaps. To implement these requirements, Regulation SBSR requires that all security-based swaps to be reported to a registered SDR, and requires the registered SDR immediately to disseminate a subset of that information to the public. Regulation SBSR specifies the security-based swap information that must be reported, who has the duty to report, and the timeframes for reporting and disseminating information. Regulation SBSR also requires registered SDRs to establish policies and procedures governing the reporting and dissemination process, including procedures for utilizing unique identification codes for legal entities, units of legal entities (such as branches, trading desks, and individual traders), products, and transactions. In the Regulation SBSR Proposing Release, the Commission highlighted certain overarching benefits to the security-based swap markets that it preliminarily believed would result from the adoption of Regulation SBSR. These potential

[1164] The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 908(c)(2)(ii) will be approximately 80 of in-house counsel time, plus $80,000 for the services of outside professionals (based on 200 hours of outside counsel time × $400). *See id.,* Cross-Border Proposing Release, 78 FR 31110

[1165] If and when the Commission grants a request for substituted compliance, subsequent applications might be able to leverage work done on the initial application. However, the Commission is unable to estimate the amount by which the cost could decrease without knowing the extent to which different jurisdictions have similar regulatory structures.

[1166] The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 242.908(c)(2)(ii) will be up to approximately 800 hours (80 hours of in-house counsel time × 10 respondents), plus $800,000 for the services of outside professionals (based on 200 hours of outside counsel time × $400 × 10 respondents). *See* Cross-Border Proposing Release, 78 FR 31110.

[1167] The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 242.908(c)(2)(ii) would be up to approximately 160 hours (80 hours of in-house counsel time × 2 respondents) + plus $160,000 for the services of outside professionals (based on 200 hours of outside counsel time × $400 × 2 respondents). *See* Cross-Border Proposing Release, 78 FR 31110.

[1168] *See* Regulation SBSR Proposing Release, 75 FR 75261.

[1169] *See* SDR Adopting Release, Section VI(A)(1)(c).

benefits include, generally, improved market quality, improved risk management, greater efficiency, and improved Commission oversight.[1170]

In the Cross-Border Proposing Release, the Commission re-proposed Regulation SBSR in its entirety and considered the changes to the initial assessments of costs and benefits associated with the re-proposed rules. In doing so, the Commission explained that Regulation SBSR is intended to further the goals highlighted in the Regulation SBSR Proposing Release, while further limiting, to the extent practicable, the overall costs to the security-based swap market associated with regulatory reporting and public dissemination in cross-border situations.[1171] The adopted rules are designed to limit overall costs by imposing reporting duties and the associated costs on those parties who are most likely to have the necessary infrastructure in place to carry out the reporting function.[1172] As the Commission noted, many of the revisions set forth in the re-proposal were suggested by commenters to the initial proposal and were designed, among other things, to better align reporting duties with larger entities that have greater resources and capability to report and to reduce the potential for duplicative reporting. The Commission stated that the revisions should help to limit, to the extent practicable, the overall costs to the security-based swap market associated with reporting in cross-border situations.[1173]

The Commission is now adopting Regulation SBSR, with certain revisions discussed in Sections I through XVII, *supra.*

In assessing the economic impact of the rules, the Commission refers to the broader costs and benefits associated with the application of the adopted rules as ''programmatic'' costs and benefits. These include the costs and benefits of applying the substantive Title VII requirements to the reporting of transactions by market participants, as well as to the functions performed by infrastructure participants (such as SDRs) in the security-based swap market. In several places the Commission also considers how the programmatic costs and benefits might change when comparing the adopted approach to other alternatives suggested by comment letters. The Commission's analysis also considers ''assessment'' costs—those that arise from current and future market participants expending resources to determine whether they are subject to Regulation SBSR, and could incur expenses in making this determination even if they ultimately are not subject to rules for which they made an assessment.

The Commission's analysis also recognizes that certain market participants are subject to Regulation SBSR while potentially also being subject to requirements imposed by other regulators. Concurrent, and potentially duplicative or conflicting, regulatory requirements could be imposed on persons because of their resident or domicile status or because of the place their security-based swap transactions are conducted. Rule 908(c) establishes a mechanism whereby market participants who would be subject to both Regulation SBSR and a foreign regulatory regime could, subject to certain conditions, ''substitute compliance'' with the foreign regulatory regime for compliance with Regulation SBSR.

A. Broad Economic Considerations

Among the primary economic considerations for promulgating the rules on the regulatory reporting and public dissemination of security-based swap information are the risks to financial stability posed by security-based swap activity and exposures and the effect that the level of transparency in the security-based swap market may have on market participants' ability to efficiently execute trades. For example, on one hand, an increased level of transparency may make trading more efficient since market participants have additional information on which to base their trading decisions. On the other hand, if post-trade transparency makes hedging of large trades or trades in illiquid securities more difficult, it may make execution of these trades less efficient.[1174]

As the Commission has noted previously,[1175] the security-based swap market allows participants opportunities for efficient risk sharing. By transacting in security-based swaps, firms can lay off financial and commercial risks that they are unwilling to bear to counterparties who may be better-equipped to bear them. Risk transfer is accomplished through contractual obligations to exchange cash flows with different risk characteristics. These opportunities for risk sharing, however, also represent opportunities for risk transmission through a variety of channels. For instance, a credit event that triggers a large payout to one counterparty by a seller of credit protection, may render that protection seller unable to meet other payment obligations, placing its other counterparties under financial strain. In addition to the risk of sequential counterparty default, security-based swap relationships can transmit risks across asset classes and jurisdictional boundaries through liquidity and asset price channels.

Unlike most other securities transactions, security-based swaps entail ongoing financial obligations between counterparties during the life of a transaction that could span several years. As a result of these ongoing obligations, market participants are exposed not only to the market risk of assets that underlie a security-based swap contract, but also to the credit risk of their counterparties until the transaction is terminated. These exposures create a web of financial relationships in which the failure of a single large firm active in the security-based swap market can have consequences beyond the firm itself. A default by such a firm, or even the perceived lack of creditworthiness of that firm, could produce contagion through sequential counterparty default or reductions in liquidity, willingness to extend credit, and valuations for financial instruments.[1176]

Currently, the security-based swap market is an OTC market without standardized reporting or public

[1170] *See* Regulation SBSR Proposing Release, 75 FR 75261–62.

[1171] *See* Cross-Border Proposing Release, 78 FR 31196–97.

[1172] While certain parties that generally will have the heaviest duties to report transactions (*e.g.,* registered security-based swap dealers and registered major security-based swap participants) will incur costs, the costs of those parties generally will be lower than they would be for other parties (*e.g.,* non-dealers) because those parties may already have the necessary infrastructure in place to report transactions and they will benefit from economies of scale due to the high volume of transactions that flows through them compared to other parties. Although security-based swap dealers and major security-based swap participants might pass on these costs, at least in part, to their non-reporting counterparties, the costs that are passed on to non-reporting parties are likely to be lower than the costs that the non-reporting parties would face if they had direct responsibility to report these transactions.

[1173] *See* Cross-Border Proposing Release, 78 FR 31192.

[1174] *See* Analysis of Post-Trade Transparency, in which Commission staff describes the effects of post-trade transparency on relatively illiquid swaps.

[1175] *See* Cross-Border Adopting Release, 79 FR 47283–85.

[1176] *See, e.g.,* Markus K. Brunnermeier and Lasse Heje Pedersen, ''Market Liquidity and Funding Liquidity,'' Review of Financial Studies (2009); Denis Gromb and Dimitri Vayanos, ''A Model of Financial Market Liquidity,'' Journal of the European Economic Association (2010).

dissemination requirements.[1177] Market participants observe only the details of transactions for which they are a counterparty, and there is no comprehensive and widely available source of information about transactions after they occur (post-trade transparency). As a result, the ability of a market participant to evaluate a potential transaction depends on its own transaction history and indicative (non-binding) quotes that it may obtain through fee-based services, and OTC market participants with the largest order flow have an informational advantage over other market participants. The value of private information to large dealers may, in part, explain why security-based swap market participants do not have sufficient incentive to voluntarily implement post-trade transparency.[1178] Additionally, unless all market participants are subject to reporting rules, market participants who may prefer a more transparent market structure may not believe that the benefits of disseminating data about their own limited order flow justifies the costs associated with building and paying for the necessary infrastructure to support public dissemination of transaction information.

The discussion below presents an overview of the OTC derivatives markets, a consideration of the general costs and benefits of the regulatory reporting and public dissemination requirements, and a discussion of the costs and benefits of each rule within Regulation SBSR. The economic analysis concludes with a discussion of the potential effects of Regulation SBSR, as adopted, on efficiency, competition, and capital formation.

B. Baseline

To assess the economic impact of the final rules described in this release, the Commission is using as a baseline the security-based swap market as it exists at the time of this release, including applicable rules adopted by the Commission but excluding rules that have been proposed but not yet finalized. The analysis includes the statutory and regulatory provisions that currently govern the security-based swap market pursuant to the Dodd-Frank Act. The Commission also has considered, where appropriate, the impacts on market practice of other regulatory regimes.

1. Current Security-Based Swap Market

The Commission's analysis of the state of the current security-based swap market is based on data obtained from DTCC–TIW, particularly data regarding the activity of market participants in the single-name credit default swap (CDS) market during the period from 2008 to 2013. Some of the Commission staff's analysis regarding the impact of CFTC trade reporting rules entails the use of open positions and transaction activity data for index credit default swap (index CDS) and single-name CDS during the period from July 1, 2011 to June 30, 2013, obtained from the DTCC–TIW and through the DTCC public Web site of weekly stock and volume reports.[1179] The data for index CDS encompasses CDS on both broad-based security indices and narrow-based security indices, and ''security-based swap'' in relevant part encompasses swaps based on single securities or on narrow-based security indices.[1180]

While other trade repositories may collect data on transactions in total return swaps on equity and debt, the Commission does not currently have access to such data for these products (or other products that are security-based swaps). As such, the Commission is unable to analyze security-based swaps other than those described above. However, the Commission believes that the single-name CDS data are representative of the market and therefore can directly inform the analysis of the state of the current security-based swap market.[1181]

The Commission believes that the data underlying its analysis provides reasonably comprehensive information regarding the single-name CDS transactions and composition of the single-name CDS market participants. The Commission notes that the data available from DTCC–TIW do not encompass those CDS transactions that both: (1) Do not involve U.S. counterparties[1182]; and (2) are based on reference entities domiciled outside the United States (non-U.S. reference entities). Notwithstanding this limitation, the Commission believes that the DTCC–TIW data provide information that is sufficient for the purpose of identifying the types of market participants active in the security-based swap market and the general characteristics of transactions within that market.[1183]

a. Security-Based Swap Market Participants

The available data supports the characterization of the security-based swap market as one that relies on intermediation by a small number of entities that engage in dealing activities. In addition to this small number of dealing entities, thousands of other participants appear as counterparties to security-based swap contracts in the sample, and include, but are not limited to, investment companies, pension funds, private (hedge) funds, sovereign entities, and industrial companies. Most non-dealer users of security-based swaps do not directly engage in the trading of swaps with other non-dealers, but use dealers, banks, or investment advisers as intermediaries or agents to establish their positions. Based on an analysis of the counterparties to trades reported to the DTCC–TIW, there are 1,800 entities that engaged directly in trading between November 2006 and December 2013.

Table 1, below, highlights that close to three-quarters of these entities (DTCC-defined ''firms'' shown in DTCC–TIW, which are referred to here as ''transacting agents'') were identified as investment advisers, of which approximately 40% (about 30% of all transacting agents) were registered investment advisers under the Investment Advisers Act of 1940.[1184] Although investment advisers comprise the vast majority of transacting agents, the transactions that they executed account for only 9.7% of all single-name CDS trading activity reported to the DTCC–TIW, measured by number of

[1177] There is voluntary reporting as well as voluntary clearing, as discussed in Section XXII(B). However, transaction level information is not made public through these channels. Only limited information (*e.g.,* trading volume and notional outstanding) is available publicly on an aggregate basis, and often with a delay.

[1178] Throughout Section XXII, the term ''dealers'' refers to security-based swap market participant that engage in dealing activities while the term ''registered dealers'' are those required to register with the Commission. See Intermediary Definitions Adopting Release, 77 FR 30596; Cross-Border Adopting Release, 79 FR 47277.

[1179] The DTCC public Web site can be found at *http://www.dtcc.com/repository-otc-data.aspx*, last visited September 22, 2014. *See also* Analysis of Post-Trade Transparency.

[1180] *See* Section 3(a)(68) of the Exchange Act. *See also* Product Definitions Adopting Release, 77 FR 48208.

[1181] *See* Cross-Border Proposing Release, 78 FR 31120.

[1182] The Commission notes that DTCC–TIW's entity domicile determinations may not reflect the definition of ''U.S. person'' in Rule 900(ss).

[1183] Commission staff estimates, using data from 2013, that the transaction data include 77% of all single-name CDS transactions reported to DTCC–TIW.

[1184] *See* 15 U.S.C. 80b1–80b21. Transacting agents engage in the security-based swap market, without relying on an intermediary, on behalf of principals. For example, a university endowment may hold a position in a security-based swap that is built up by an investment adviser that transacts on the endowment's behalf. In this case, the university endowment is a principal that uses the investment adviser as a transacting agent.

transaction-sides.[1185] The vast majority of transactions (84.1%) measured by number of transaction-sides were executed by ISDA-recognized dealers.[1186]

TABLE 1—THE NUMBER OF TRANSACTING AGENTS BY COUNTERPARTY TYPE AND THE FRACTION OF TOTAL TRADING ACTIVITY, FROM NOVEMBER 2006 THROUGH DECEMBER 2013, REPRESENTED BY EACH COUNTERPARTY TYPE

Transacting agents	Number	Percent	Transaction share (%)
Investment Advisers	1,347	74.8	9.7
—SEC registered	*529*	*29.4*	*5.9*
Banks	256	14.2	5.0
Pension Funds	29	1.6	0.1
Insurance Companies	36	2.0	0.2
ISDA-Recognized Dealers [1187]	17	0.9	84.1
Other	115	6.4	1.0
Total	1,800	100	100

Principal holders of CDS risk exposure are represented by ''accounts'' in the DTCC–TIW.[1188] The staff's analysis of these accounts in DTCC–TIW shows that the 1,800 transacting agents classified in Table 1 represent over 10,054 principal risk holders. Table 2, below, classifies these principal risk holders by their counterparty type and whether they are represented by a registered or unregistered investment adviser.[1189] For instance, 256 banks in Table 1 allocated transactions across 369 accounts, of which 30 were represented by investment advisers. In the remaining 339 instances, banks traded for their own accounts. Meanwhile, 17 ISDA-recognized dealers in Table 1 allocated transactions across 69 accounts.

Among the accounts, there are 1,086 special entities [1190] and 636 investment companies registered under the Investment Company Act.[1191] Private funds comprise the largest type of account holders that the Commission was able to classify, and although not verified through a recognized database, most of the funds that could not be classified appear to be private funds.[1192]

[1185] Each transaction has two transaction sides, *i.e.,* two transaction counterparties.

[1186] The 1,800 entities included all DTCC-defined ''firms'' shown in DTCC–TIW as transaction counterparties that report at least one transaction to DTCC–TIW as of December 2013. The staff in the Division of Economic and Risk Analysis classified these firms, which are shown as transaction counterparties, by machine matching names to known third-party databases and by manual classification. This is consistent with the methodology used in the re-proposal. *See* Cross-Border Proposing Release, 78 FR 31120 note 1304. Manual classification was based in part on searches of the EDGAR and Bloomberg databases, the Commission's Investment Adviser Public Disclosure database, and a firm's public Web site or the public Web site of the account represented by a firm. The staff also referred to ISDA protocol adherence letters available on the ISDA Web site.

[1187] For the purpose of this analysis, the ISDA-recognized dealers are those identified by ISDA as belonging to the G14 or G16 dealer group during the period: JP Morgan Chase NA (and Bear Stearns), Morgan Stanley, Bank of America NA (and Merrill Lynch), Goldman Sachs, Deutsche Bank AG, Barclays Capital, Citigroup, UBS, Credit Suisse AG, RBS Group, BNP Paribas, HSBC Bank, Lehman Brothers, Société Générale, Credit Agricole, Wells Fargo, and Nomura. *See, e.g., http://www.isda.org/c_and_a/pdf/ISDA-Operations-Survey-2010.pdf* (last visited September 22, 2014).

[1188] ''Accounts'' as defined in the DTCC–TIW context are not equivalent to ''accounts'' in the definition of ''U.S. person'' provided by Rule 3a71–3(a)(4)(i)(C) under the Exchange Act. They also do not necessarily represent separate legal persons. One entity or legal person may have multiple accounts. For example, a bank may have one DTCC account for its U.S. headquarters and one DTCC account for one of its foreign branches.

[1189] Unregistered investment advisers include all investment advisers not registered under the Investment Advisers Act and may include investment advisers registered with a state or a foreign authority.

[1190] *See* Section 15F(h)(2)(C) of the Exchange Act, 15 U.S.C. 78o–10(h)(2)(C) (defining ''special entity'' to include a federal agency; a state, state agency, city, county, municipality, or other political subdivision of a state; any employee benefit plan; any governmental plan; or any endowment).

[1191] There remain over 4,000 DTCC ''accounts'' unclassified by type. Although unclassified, each was manually reviewed to verify that it was not likely to be a special entity and instead was likely to be an entity such as a corporation, an insurance company, or a bank.

[1192] Private funds for the purpose of this analysis encompass various unregistered pooled investment vehicles, including hedge funds, private equity funds, and venture capital funds.

TABLE 2—THE NUMBER AND PERCENTAGE OF ACCOUNT HOLDERS—BY TYPE—WHO PARTICIPATE IN THE SECURITY-BASED SWAP MARKET THROUGH A REGISTERED INVESTMENT ADVISER, AN UNREGISTERED INVESTMENT ADVISER, OR DIRECTLY AS A TRANSACTING AGENT, FROM NOVEMBER 2006 THROUGH DECEMBER 2013

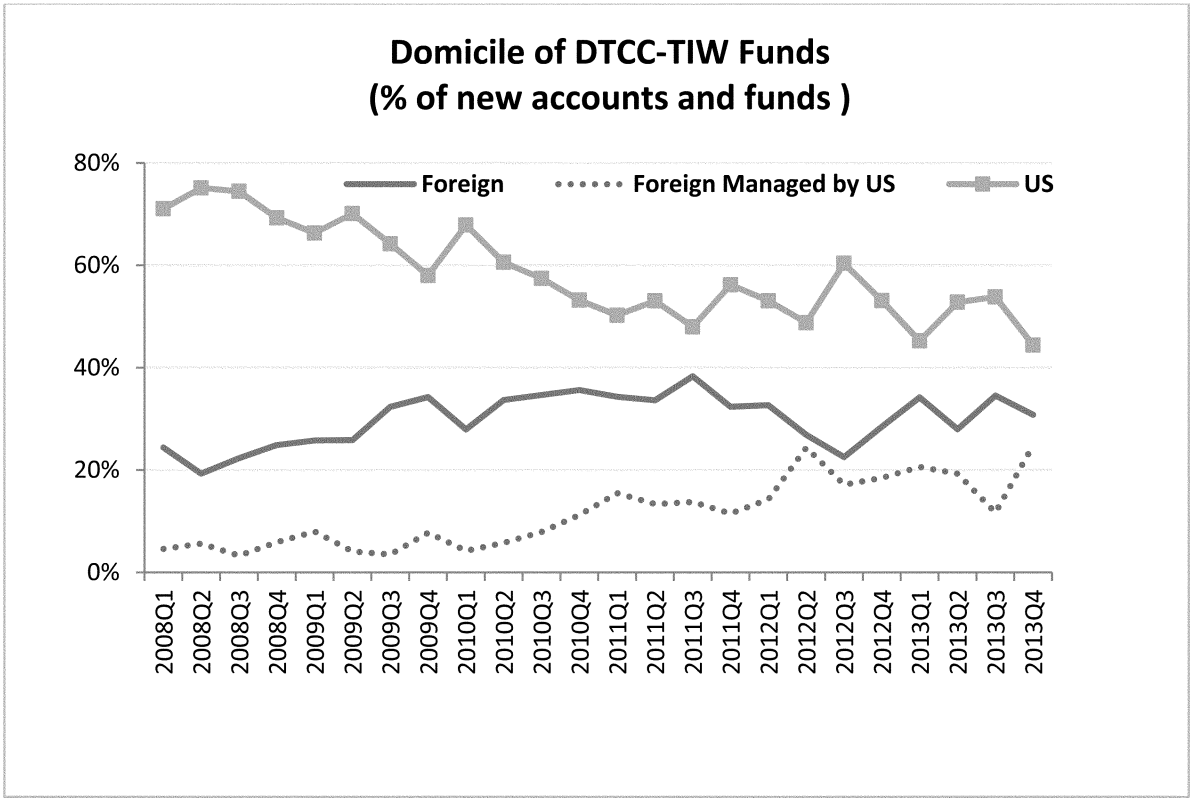
Account holders by type	Number	Represented by a registered investment adviser		Represented by an unregistered investment adviser		Participant is transacting agent [1193]	
Private Funds	2,914	1,395	48%	1,496	51%	23	1%
DFA Special Entities	1,086	1,050	97%	12	1%	24	2%
Registered Investment Companies	636	620	97%	14	2%	2	0%
Banks (non-ISDA-recognized dealers)	369	25	7%	5	1%	339	92%
Insurance Companies	224	144	64%	21	9%	59	26%
ISDA-Recognized Dealers	69	0	0%	0	0%	69	100%
Foreign Sovereigns	63	45	71%	2	3%	16	25%
Non-Financial Corporations	57	39	68%	3	5%	15	26%
Finance Companies	10	5	50%	0	0%	5	50%
Other/Unclassified	4,626	3,130	68%	1,294	28%	200	4%
All	10,054	6,453	64%	2,847	28%	752	7%

i. Participant Domiciles

The security-based swap market is global in scope, with counterparties located across multiple jurisdictions. A U.S.-based holding company may conduct dealing activity through a foreign subsidiary that faces both U.S. and foreign counterparties, and the foreign subsidiary may be guaranteed by its parent, making the parent responsible for performance under these security-based swaps.

[1193] This column reflects the number of participants who are also trading for their own accounts.

Figure 1: The percentage of (1) new accounts with a domicile in the United States (referred to as "US"), (2) new accounts with domicile outside the United States (referred to below as "Foreign"), and (3) new accounts outside the United States but managed by a U.S. person, account of a foreign branch of a U.S. person, and account of a foreign subsidiary of a U.S. person (collectively referred to below as "Foreign Managed by US").[1194] Unique, new accounts are aggregated each quarter and shares are computed on a quarterly basis, from January 2008 through December 2013.



As depicted in Figure 1, over time a greater share of accounts entering the market either have a foreign domicile, or have a foreign domicile while being managed by a U.S. person. The increase in foreign accounts may reflect an increase in participation by foreign accountholders while the increase in foreign accounts managed by U.S. persons may reflect the flexibility with which market participants can restructure their market participation in response to regulatory intervention, competitive pressures, and other stimuli. There are, however, alternative explanations for the shifts in new account domicile that can be observed in Figure 1. Changes in the domicile of new accounts through time may reflect improvements in reporting by market participants to DTCC–TIW.[1195] Additionally, because the data include only accounts that are domiciled in the United States, transact with U.S.-domiciled counterparties, or transact in single-name CDS with U.S. reference entities, changes in the domicile of new accounts may reflect increased transaction activity between U.S. and non-U.S. counterparties.

ii. Current Estimates of Dealers and Major Participants

In its economic analysis of rules defining ''security-based swap dealer'' and ''major security-based swap participant,'' the Commission noted, using DTCC–TIW data for the year ending in December 2012, that it expected 202 entities to engage in dealer *de minimis* analysis.[1196] Further, the Commission's analysis of single-name CDS transactions data suggested that only a subset of these entities engage in dealing activity and estimated 50 registered dealers as an upper bound based on the threshold for the *de minimis* exception adopted in that release.[1197] The Commission also undertook an analysis of the number of security-based swap market participants likely to register as major security-based swap participants, and estimated a range of between zero and five such participants.[1198] Based on data for the

[1194] Following publication of the Warehouse Trust Guidance on CDS data access, DTCC–TIW surveyed market participants, asking for the physical address associated with each of their accounts (*i.e.,* where the account is organized as a legal entity). This is designated the registered office location by the DTCC–TIW. When an account does not report a registered office location, the Commission has assumed that the settlement country reported by the investment adviser or parent entity to the fund or account is the place of domicile. This treatment assumes that the registered office location reflects the place of domicile for the fund or account.

[1195] *See supra* note 3.

[1196] *See* Cross-Border Adopting Release, 79 FR 47331.

[1197] *Id.* at 47296, note 150 (describing the methodology employed by the Commission to estimate the number of potential security-based swap dealers).

[1198] *Id.* at 47297, note 153 (describing the methodology employed by the Commission to estimate the number of potential major security-based swap participants).

year ending in December 2013, the Commission continues to believe that 50 represents an upper bound on the number of dealers expected to register and between zero and five major participants will register. As a result of further experience with the DTCC–TIW data, the Commission now estimates, based on data for the year ending in December 2013, that the number of participants likely to engage in dealer *de minimis* analysis is approximately 170. Forty-eight of these participants are domiciled outside of the United States and have $2 billion in transactions with U.S. counterparties or that otherwise may have to be counted for purposes of the *de minimis* analysis.

iii. Security-Based Swap Data Repositories

There are currently no SDRs registered with the Commission. However, the CFTC has provisionally registered four swap data repositories to accept credit derivatives. The Commission believes that these entities may register with the Commission as SDRs. Because most participants in the security-based swap market also participate in the swap market,[1199] other persons might, in the future, seek to register with both the CFTC and the Commission as SDRs. In addition, once a swap data repository has established infrastructure sufficient to allow it to register with the CFTC, the costs for it to also register with the Commission as an SDR and adapt its business for security-based swap activity will likely be low relative to the costs for a wholly new entrant.

b. Security-Based Swap Transaction Activity

Single-name CDS contracts make up the vast majority of security-based swap products and most are written on corporate issuers, corporate debt securities, sovereign countries, or sovereign debt securities (reference entities and reference securities). Figure 2, below, describes the percentage of global, notional transaction volume in U.S. single-name CDS reported to the DTCC–TIW between January 2008 and December 2013, separated by whether transactions are between two ISDA-recognized dealers (interdealer transactions) or whether a transaction has at least one non-dealer counterparty.

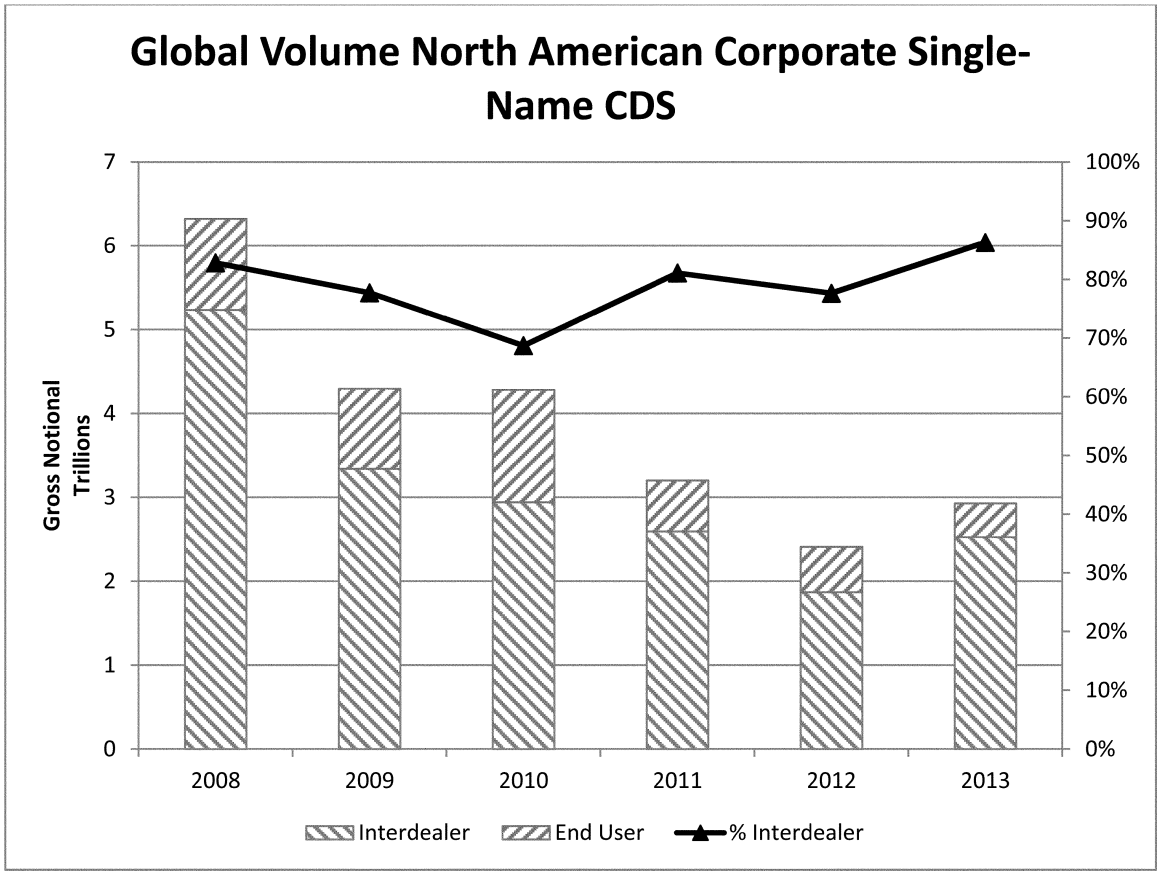
The level of trading activity with respect to U.S. single-name CDS in terms of notional volume has declined from more than $6 trillion in 2008 to less than $3 trillion in 2013.[1200] While notional volume has declined over the past six years, the share of interdealer transactions has remained fairly constant and interdealer transactions continue to represent the bulk of trading activity, whether measured in terms of notional value or number of transactions (see Figure 2).

The high level of interdealer trading activity reflects the central position of a small number of dealers who each intermediate trades among many hundreds of counterparties. While the Commission is unable to quantify the current level of trading costs for single-name CDS, it appears that the market power enjoyed by dealers as a result of their small number and the large proportion of order flow they privately observe is a key determinant of trading costs in this market.

[1199] *See infra* Section XXII(B)(3).

[1200] The start of this decline predates the enactment of the Dodd-Frank Act and the proposal of rules thereunder. For the purpose of establishing an economic baseline, this seems to indicate that CDS market demand shrank prior to the enactment of the Dodd-Frank Act, and therefore the causes of trading volume declines may be independent of those related to the development of security-based swap market regulation. If the security-based swap market experiences further declines in trading activity, it would be difficult to identify the effects of the newly-developed security-based swap market regulation apart from changes in trading activity that may be due to natural market forces or the anticipation of (or reaction to) proposed (or adopted) Title VII requirements. These estimates differ from previous estimates as a result of staff experience with transaction-level data provided by DTCC–TIW. First, the aggregate level of transaction activity presented in Figure 2 more accurately reflects the notional amounts associated with partial assignments and terminations of existing security-based swap contracts. Second, the treatment of assignments in Figure 2 includes the counterparty type (dealer or non-dealer) of counterparties vacating trades in assignments as well as those entering.

Figure 2: Global, notional trading volume in North American corporate single-name CDS by calendar year and the fraction of volume that is interdealer.



Against this backdrop of declining North American corporate single-name CDS activity, about half of the trading activity in North American corporate single-name CDS reflected in the set of data that the Commission analyzed was between counterparties domiciled in the United States and counterparties domiciled abroad. Basing counterparty domicile on the self-reported registered office location of the DTCC–TIW accounts, the Commission estimates that only 13% of the global transaction volume by notional volume between 2008 and 2013 was between two U.S.-domiciled counterparties, compared to 48% entered into between one U.S.-domiciled counterparty and a foreign-domiciled counterparty and 39% entered into between two foreign-domiciled counterparties (see Figure 3).[1201]

When the domicile of DTCC–TIW accounts are instead defined according to the domicile of their ultimate parents, headquarters, or home offices (*e.g.,* classifying a foreign branch or foreign subsidiary of a U.S. entity as domiciled in the United States), the fraction of transactions entered into between two U.S.-domiciled counterparties increases to 29%, and to 53% for transactions entered into between a U.S.-domiciled counterparty and a foreign-domiciled counterparty.

Differences in classifications across different definitions of domicile illustrate the effect of participant structures that operate across jurisdictions. Notably, the proportion of activity between two foreign-domiciled counterparties drops from 39% to 18% when domicile is defined as the ultimate parent's domicile. As noted earlier, foreign subsidiaries of U.S. persons, foreign branches of U.S. persons, and U.S. subsidiaries of foreign persons, and U.S. branches of foreign persons may transact with U.S. and foreign counterparties. However, this decrease in share suggests that the activity of foreign subsidiaries of U.S. persons and foreign branches of U.S. persons is generally higher than the activity of U.S. subsidiaries of foreign persons and U.S. branches of foreign persons.

By either of those definitions of domicile, the data indicate that a large fraction of North American corporate single-name CDS transaction volume is entered into between counterparties domiciled in two different jurisdictions or between counterparties domiciled outside the United States. For the purpose of establishing an economic baseline, this observation indicates that a large fraction of security-based swap activity would be affected by the scope of any cross-border approach we take in applying the Title VII requirements. Further, the large fraction of North American corporate single-name CDS transactions between U.S.-domiciled and foreign-domiciled counterparties also highlights the extent to which security-based swap activity transfers risk across geographical boundaries, both facilitating risk sharing among market participants and allowing for risk transmission between jurisdictions.

[1201] *See supra* notes 788 and 1183.

Figure 3: The fraction of notional volume in North American corporate single-name CDS between (1) two U.S.-domiciled accounts, (2) one U.S.-domiciled account and one non-U.S.-domiciled account, and (3) two non-U.S.-domiciled accounts, computed from January 2008 through December 2013.

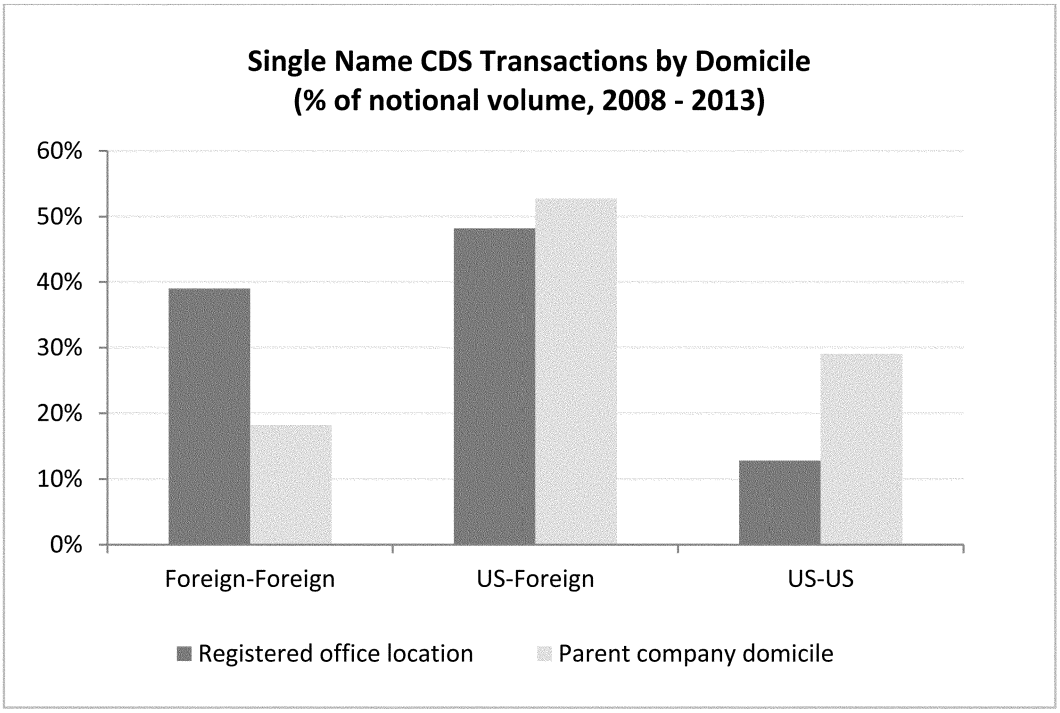
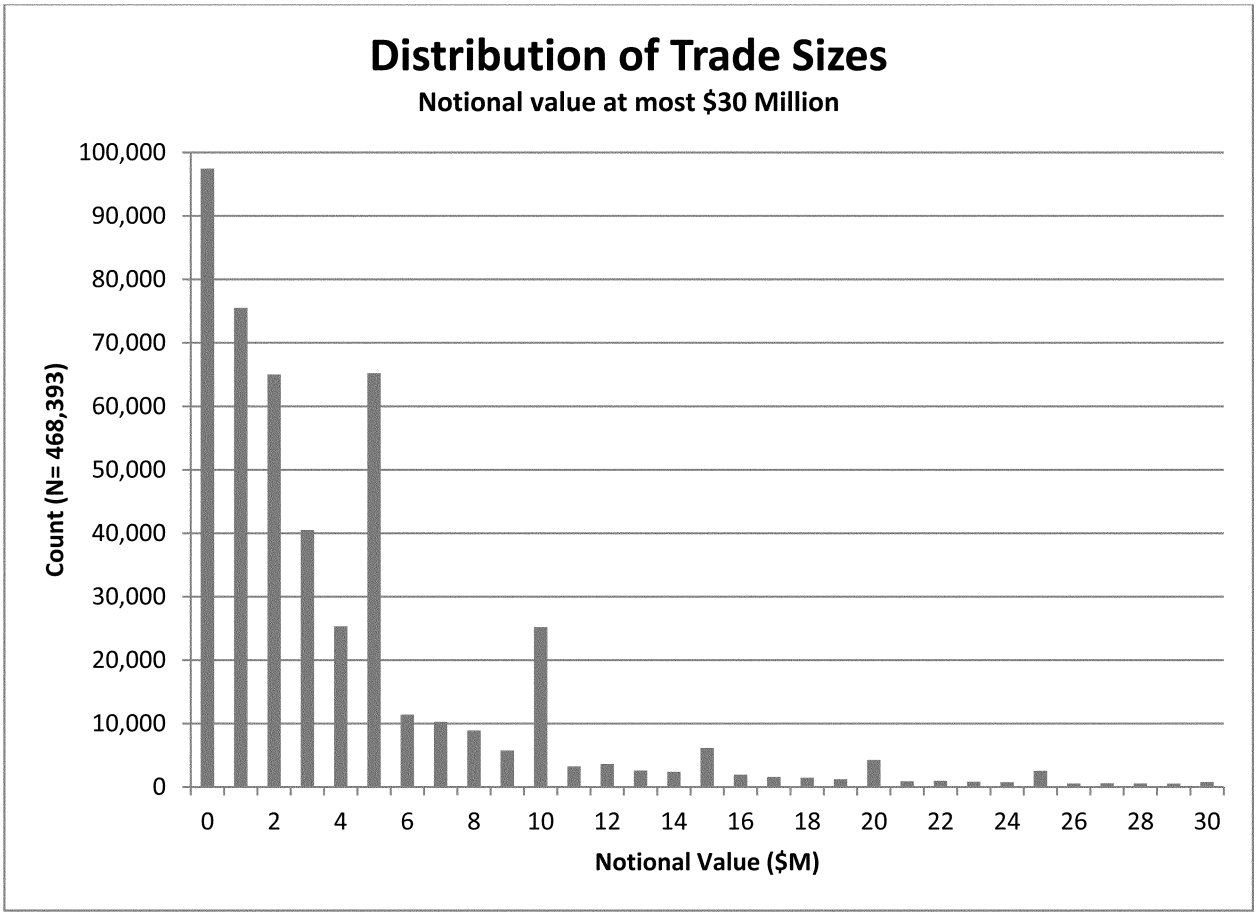


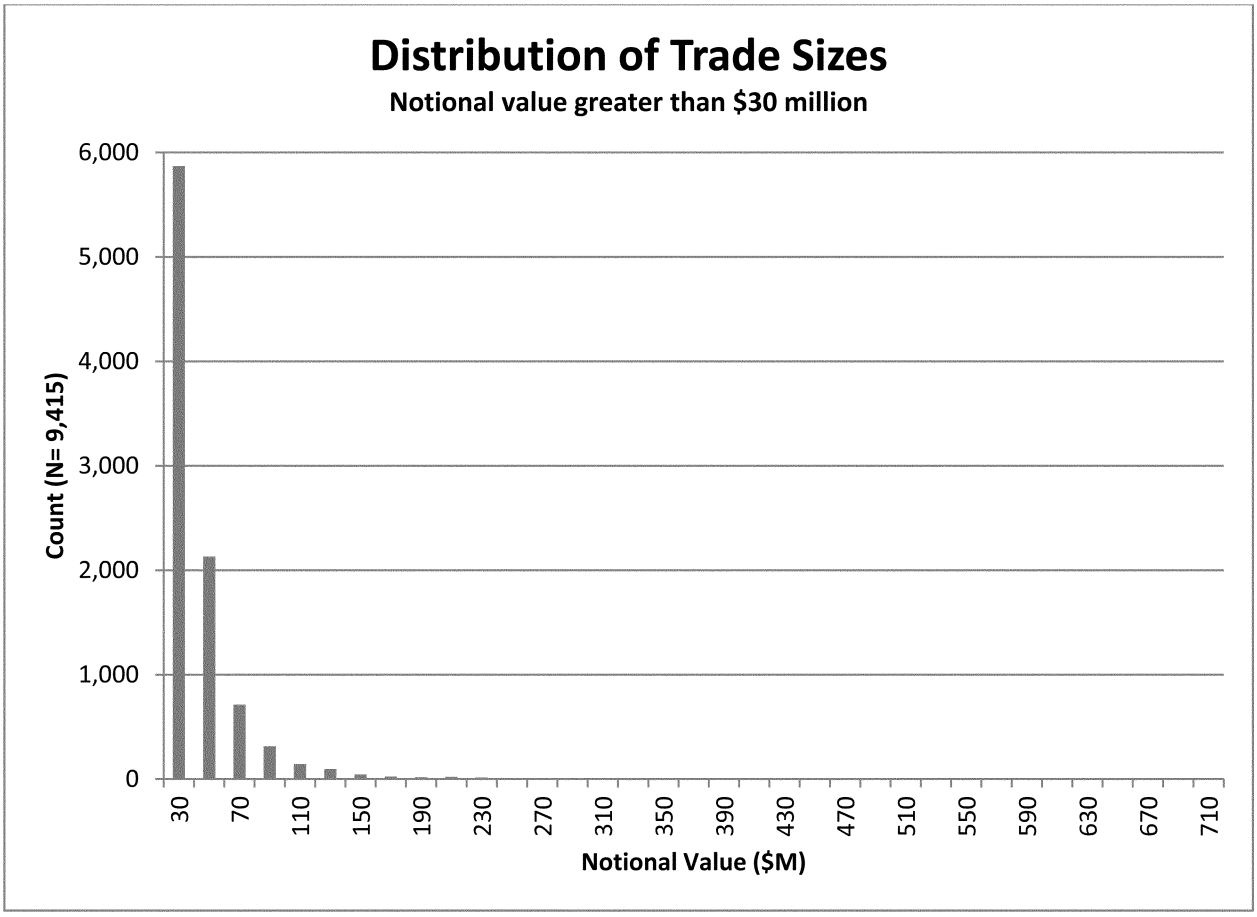
Figure 4: Distribution of notional trading volumes in North American corporate single-name CDS for transactions in 2013 with notional value of at most $30 million.[1202]



Figures 4 and 5 present the frequency distribution of trades by size for two subsamples of transactions observed in 2013. A salient feature of the trade size distribution is that trades tend to be clustered at ''round'' numbers: $1 million, $5 million, $10 million, *etc.* While large and very large trades do occur, less than 1% of the transactions in our sample were for notional amounts greater than $100 million.

[1202] The left-most bar, labeled ''0'', represents the number of trades with notional values greater than $0 and less than $1 million, while the next bar represents the number of trades with notional values greater than or equal to $1 million and less than $2 million, and so on. The right-most bar, labeled ''30'', represents the number of trades with notional values of exactly $30 million.

Figure 5: Distribution of notional trading volumes in North American corporate single-name CDS for transactions in 2013 with notional value of more than $30 million.[1203]



c. Counterparty Reporting

While there is no mandatory reporting requirement for the single-name CDS market yet, virtually all market participants voluntarily report their trades to DTCC–TIW, in some cases with the assistance of post-trade processors, which maintains a legal record of transactions.[1204] Among other things, this centralized record-keeping facilitates settlement of obligations between counterparties when a default event occurs as well as bulk transfers of positions between accounts at a single firm or between firms. In addition, while there is not yet a mandatory clearing requirement in the single-name CDS market, market participants may choose to clear transactions voluntarily. However, neither voluntary reporting nor voluntary clearing results in data that are available to the public on a trade-by-trade basis.

In the Regulation SBSR Proposing Release, the Commission preliminarily estimated that there would be 1,000 reporting parties [1205] and 15.5 million reportable events per year.[1206] In the Cross-Border Proposing Release, the Commission revised its estimate of the number of reporting sides from 1,000 to 300 and revised its estimate of the number of reportable events from 15.5 million to approximately 5 million.[1207] These revised estimates were a result of the Commission obtaining additional and more granular data regarding participation in the security-based swap market from DTCC–TIW. As discussed above, since issuing the Cross-Border Proposing Release, the Commission has obtained additional and even more granular data regarding participation in the security-based swap market from DTCC–TIW. As a result, the Commission is now further revising its estimate of the number of reportable events. Accordingly, the Commission now estimates that 300 reporting sides will be required to report an aggregate total of approximately 3 million reportable events per year under Rule 901, as adopted.[1208]

TABLE 3—TRADE REPORTS BY TRANSACTION TYPE, 2013

	Count
Interdealer	1,231,796
Dealer—Non-Dealer	482,860
Clearinghouse	546,041
Total	2,260,577

[1203] The left-most bar, labeled ''30'', represents the number of trades with notional values greater than $30 and less than $50 million, while the next bar represents the number of trades with notional values greater than or equal to $50 million and less than $70 million, and so on. The right-most bar, labeled ''710'', represents the number of trades with notional value greater than $710 million.

[1204] *See* ''ISDA CDS Marketplace: Exposures and Activity'' (available at *http://www.isdacdsmarketplace.com/exposures_and_activity* (last visited September 22, 2014).

[1205] *See* 75 FR 75247.

[1206] *See id.* at 75248.

[1207] *See* 78 FR 31114.

[1208] *See supra* note 1070.

d. Sources of Security-Based Swap Information

There currently is no robust, widely accessible source of information about individual security-based swap transactions. Nevertheless, market participants can gather certain limited information for the single-name CDS [1209] market from a variety of sources. First, indicative quotes can be obtained through market data vendors such as Bloomberg or Markit. These quotes typically do not represent firm commitments to buy or sell protection on particular reference entities. Since there is no commitment to buy or sell associated with indicative quotes, there are fewer incentives for market participants that post indicative quotes to quote prices that accurately reflect the fundamental value of the asset to be traded. However, market participants can glean information from indicative quotes that may inform their trading.

Second, there is limited, publicly-disseminated information about security-based swap market activity presented at an aggregate level. As mentioned above, market participants sometimes voluntarily clear their transactions, *e.g.,* through ICE Clear Credit.[1210] To support their risk management activities, clearing agencies compute and disseminate information such as end-of-day prices and aggregated volume to their clearing members. ICE Clear Credit also provides aggregated volume data.[1211] Additionally, some large multilateral organizations periodically report measures of market activity. For example, the Bank for International Settlements (''BIS'') reports gross notional outstanding for single-name CDS and equity forwards and swaps semiannually.[1212]

Finally, market intermediaries may draw inferences about security-based swap market activity from observing their customers' order flow or through inquiries made by other market participants who seek liquidity. This source of information is most useful for market participants with a large market share. As noted above, the ability to observe a larger amount of order flow allows for more precise estimates of demand.

The paucity of publicly-available security-based swap data suggests a number of frictions that likely characterize the current state of efficiency, competition, and capital formation in the security-based swap market. As noted in Section XXII(A), without public dissemination of transaction information, security-based swap market participants with the largest order flow have an informational advantage over smaller competitors and counterparties. Moreover, as suggested by Table 1, there is a great deal of heterogeneity in the level of order flow observed by market participants, with a small group of large dealers participating in most transactions. These large market participants can use this advantage to consolidate their own market power by strategically filling orders when it is to their advantage and leaving less profitable trades to competitors.

Asymmetric information and dealer market power can result in financial market inefficiencies. With only a small number of liquidity suppliers competing for order flow, bid-ask spreads in the market may be wider than they would be under perfect competition between a larger number of liquidity suppliers. If this is the case, then it is possible that certain non-dealers who might otherwise benefit from risk-sharing afforded by security-based swap positions may avoid participating in the market because it is too costly for them to do so. For instance, if wide bid-ask spreads in the CDS market reduced the level of credit risk hedging by market participants, the result could be an inefficient allocation of credit risk in the economy as a whole. Additionally, financial market participants may avoid risk-sharing opportunities in the security-based swap market if they determine that lack of oversight by relevant authorities leaves the market prone to disruption. For example, if the threat of sequential counterparty default reduces security-based swap dealers' liquidity, then market participants may reduce their participation if they perceive a high risk that they will be unable to receive the contractual cash flows associated with their security-based swap positions. These sources of inefficiency can adversely affect capital formation if an inability for lenders and investors to efficiently hedge their economic exposures diminishes their willingness to fund certain borrowers and issuers with risky but profitable investing opportunities.

Lack of publicly-available transaction information could affect capital formation in other ways. Information about security-based swap transactions can be used as input into valuation models. For example, the price of a single-name CDS contract can be used to produce estimates of default risk for a particular firm and these estimates can, in turn, be used by managers and investors to value the firm's projects. In the absence of last-sale information in the CDS market, market participants may build models of default risk using price data from other markets. They may, for instance, look to the firm's bond and equity prices, the prices of swaps that may have similar default risk exposure, or to the prices of comparable assets more generally.

2. Global Regulatory Efforts

a. Dealer and Major Swap Participant Definitions for Cross-Border Security-Based Swaps

The Commission adopted final rules governing the application of the ''security-based swap dealer'' and ''major security-based swap participant'' definitions with respect to cross-border security-based swap activity and exposures.[1213] The final rules generally require, among other things, that non-U.S. persons assess whether their dealing activities with and exposures against U.S. persons or with recourse guarantees against U.S. persons rise above *de minimis* levels.[1214] In the Cross-Border Adopting Release, the Commission discussed the costs that non-U.S. persons would incur in order to perform this assessment and the likely number of participants whose activity and exposures would likely be large enough to make such an assessment prudent.[1215] These costs included amounts related to collecting, analyzing, and monitoring representations about the U.S.-person status of counterparties, and whether particular transactions had recourse guarantees against U.S. persons.[1216]

b. International Regulatory Developments

International efforts to coordinate the regulation of the OTC derivatives markets are underway, and suggest that many foreign participants will face

[1209] Regulation SBSR would also cover equity swaps (other than broad-based equity index swaps). However, the Commission has access to limited information concerning the equity swap market. As a result, the Commission's analysis is largely focused on the single-name CDS market, for which the Commission has information.

[1210] Based on the transaction data from the DTCC–TIW, Commission staff has estimated that, during the three-year period from January 2011 until December 2013, approximately 21% of all transactions in CDS with North American single-name corporate reference entities and approximately 21% of all transactions in CDS with European single-name corporate reference entities were cleared.

[1211] Available at *https://www.theice.com/marketdata/reports/98* (last visited October 20, 2014).

[1212] Available at *http://www.bis.org/statistics/derstats.htm* (last visited October 20, 2014).

[1213] *See* Cross-Border Adopting Release, 79 FR 47278.

[1214] *See id.* at 47301.

[1215] *See id.* at 47315.

[1216] *See id.* at 47332.

substantive regulation of their security-based swap activities that resemble rules the Commission is implementing. In 2009, leaders of the Group of 20 (''G20'')—whose membership includes the United States, the European Union, and 18 other countries—called for global improvements in the functioning, transparency, and regulatory oversight of OTC derivatives markets.[1217] In subsequent summits, the G20 leaders have reiterated their commitment to OTC derivatives regulatory reform and encouraged international consultation in developing standards for these markets.[1218] The FSB is a forum for international coordination of OTC derivatives reform and provides progress reports to the G20.[1219]

Jurisdictions with major OTC derivatives markets have taken steps toward substantive regulation of these markets, though the pace of regulation varies. Rulemaking and legislation has focused on four general areas: Post-trade reporting and public dissemination of transaction data, moving OTC derivatives onto centralized trading platforms, clearing of OTC derivatives, and margin requirements for OTC derivatives transactions.

Transaction reporting requirements have entered into force in Europe, Australia, Singapore, and Japan, with other jurisdictions in the process of proposing legislation and rules to implement these requirements. For example, in Canada, Ontario, Quebec, and Manitoba have transaction reporting requirements in force, while other provinces have proposed rules in that area. The European Union is currently considering updated rules for markets in financial instruments that will address derivatives market transparency and trading derivatives on regulated trading platforms.

3. Cross-Market Participation

A single-name CDS contract covers default events for a single reference entity or reference security. These entities and securities are often part of broad-based indices on which market participants write index CDS. Index CDS contracts make payouts that are contingent on the default of one or more index components and allow participants to gain exposure to the credit risk of the basket of reference entities that comprise the index, which is a function of the credit risk of the index components. As a result of this construction, a default event for a reference entity that is an index component will result in payoffs on both single-name CDS written on the reference entity and index CDS written on indices that contain the reference entity. Because of this relationship between the payoffs of single-name and index CDS, prices of these products depend upon one another.

Because payoffs associated with these single-name CDS and index CDS are dependent, hedging opportunities exist across these markets. Participants who sell protection on reference entities through a series of single-name CDS transactions can lay off some of the credit risk of their resulting positions by buying protection on an index that includes those reference entities. Entities that are active in one market are likely to be active in the other. Commission staff analysis of approximately 4,200 DTCC–TIW accounts that participated in the market for single-name CDS in 2013 revealed that approximately 2,200 of those accounts, or 52%, also participated in the market for index CDS. Of the accounts that participated in both markets, data regarding transactions in 2013 suggest that, conditional on an account transacting in notional volume of index CDS in the top third of accounts, the probability of the same account landing in the top third of accounts in terms of single-name CDS notional volume is approximately 62%; by contrast, the probability of the same account landing in the bottom third of accounts in terms of single-name CDS notional volume is only 15%.

The CFTC's cross-border guidance and swap reporting rules have likely influenced the information that market participants collect and maintain about the swap transactions they enter into and the counterparties that they face.[1220] Compliance with the CFTC's cross-border guidance and swap reporting rules would require swap counterparties to collect and maintain data items required by the CFTC regulation if they had not done so before. To the extent that the same or similar information is needed to comply with Regulation SBSR, market participants can use infrastructure already in place as a result of CFTC regulation to comply with Regulation SBSR and the costs to these market participants would be reduced.

Commenters generally expressed concern about potential differences between CFTC rules and rules promulgated by the Commission.[1221] In adopting Regulation SBSR, the Commission has been cognizant of the parallel rules imposed by the CFTC and the costs that would be imposed on market participants that must comply with both agencies' rules.

C. Programmatic Costs and Benefits of Regulation SBSR

The Commission preliminarily identified certain benefits of Regulation SBSR in both the Regulation SBSR Proposing Release and the Cross-Border Proposing Release. After careful consideration of all the issues raised by commenters, the Commission continues to believe that Regulation SBSR will result in certain benefits. These include promoting price discovery and lowering trading costs by improving the level of information to all market participants and by providing a means for the Commission and relevant authorities to gain a better understanding of the trading behaviors of participants in the security-based swap market and to identify large counterparty exposures.[1222] Additionally, the Commission believes that Regulation SBSR will improve risk management by those market participants that choose to supplement their existing risk management programs with publicly disseminated data. Risk management relies on accurate pricing, and valuation models generally yield better estimates with last-sale information being available as input.

[1217] *See* G20 Meeting, Pittsburgh, United States, September 2009, *available at: http://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf* (last visited September 22, 2014).

[1218] *See, e.g.,* G20 Meeting, St. Petersburg, Russia, September 2013, para. 71, available at *https://www.g20.org/sites/default/files/g20_resources/library/Saint_Petersburg_Declaration_ENG_0.pdf* (last visited September 22, 2014); G20 Meeting, Cannes, France, November 2011, available at *https://www.g20.org/sites/default/files/g20_resources/library/Declaration_eng_Cannes.pdf* (last visited September 22, 2014).

[1219] The FSB has published seven progress reports on OTC derivatives markets reform implementation that are available at *http://www.financialstabilityboard.org/list/fsb_publications/index.htm.*

[1220] *See* ''Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations'' (July 17, 2013), 78 FR 45292 (July 26, 2013) (''CFTC Cross-Border Guidance''). *See also Sec. Indus. & Fin. Mkts. Ass'n* v. *CFTC,* Civil Action No. 13–1916 (PLF), slip op. at 89 (D.D.C. September 16, 2014).

[1221] *See, e.g.,* SIFMA/FIA/Roundtable Letter at 3.

[1222] *See* Sections XXII(B)(1)(b), XXII(C)(2), and XXII(D)(2)(b). *See also* Amy K. Edwards, Lawrence Harris, & Michael S. Piwowar, *Corporate Bond Market Transparency and Transaction Costs,* J. of Fin., Vol. 62, at 1421–1451 (2007). It should be noted that Michael Piwowar, one of the co-authors of the first article cited, is currently an SEC Commissioner, and Amy Edwards, another of that article's co-authors, currently serves as an Assistant Director in the Commission's Division of Economic and Risk Analysis.

1. Regulatory Reporting

a. Programmatic Benefits

Rule 901, as adopted, requires all security-based swaps that are covered transactions [1223] to be reported to a registered SDR, establishes a ''reporting hierarchy'' that determines which side must report the transaction, and sets out the data elements that must be reported. The Commission believes that requiring regulatory reporting of covered transactions will yield a number of benefits. First, Rule 901 will provide a means for the Commission and other relevant authorities to gain a better understanding of the security-based swap market,[1224] including the size and scope of that market, as the Commission would have access to transaction data held by any registered SDR. The Commission and other relevant authorities can analyze the security-based swap market and potentially identify exposure to risks undertaken by individual market participants or at various levels of aggregation, as well as credit exposures that arise between counterparties. Additionally, regulatory reporting will help the Commission and other relevant authorities in the valuation of security-based swaps. For example, an improved ability of relevant authorities to value security-based swap exposures may assist these authorities in assessing compliance with rules related to capital requirements by entities that maintain such exposures on their balance sheets. Taken together, regulatory data will enable the Commission and other relevant authorities to conduct robust monitoring of the security-based swap market for potential risks to financial markets and financial market participants.

Second, data reported pursuant to Rule 901 should improve relevant authorities' ability to oversee the security-based swap market to detect, deter, and punish market abuse. The Commission and other relevant authorities will be able, for example, to observe trading activity at the level of both trading desk and individual trader, using trading desk IDs and trader IDs, respectively. While the Commission acknowledges commenters' concerns regarding the costs associated with establishing and maintaining UICs, it has considered these costs in light of its belief that aggregation of the information contained in registered SDRs using appropriate UICs—such as broker ID, trader ID, and trading desk ID—will facilitate the ability of the Commission and other relevant authorities to examine for noncompliance and pursue enforcement actions, as appropriate.[1225]

Rule 901 could result in benefits by encouraging the creation and widespread use of generally accepted standards for reference information by security-based swap market participants and infrastructure providers (such as SDRs and clearing agencies). For example, Rule 901(c)(1) requires the reporting of a product ID, for security-based swaps that can be categorized as belonging to a product group. The development and wider usage of product IDs could result in greater efficiencies for market participants, infrastructure providers, and regulators, as identifying information about security-based swap products can be conveyed with a single ID code in place of several, perhaps dozens, of separate data elements. The development and wider usage of UICs generally will provide market participants with a more reliable means of identifying to each other the same products, persons, units of persons, and transactions. The costs associated with misidentifying these aspects of a transaction include additional time and resources spent to reconcile differing data elements across transaction records. Misidentification could also result in the cancellation of a transaction if, for example, it reveals disagreement between counterparties about the economic attributes of the transaction, such as the reference obligation underlying a CDS contract.

UICs also could lead to greater regulatory efficiencies, as the Commission and other relevant authorities would have greater ability to aggregate transactions along a number of different vectors. Relevant authorities will have greater ability to observe patterns and connections in trading activity, such as whether a trader had engaged in questionable trading activity across different security-based swap products. The reporting of this information will facilitate more effective oversight, enforcement, and surveillance of the security-based swap market by the Commission and other relevant authorities. These identifiers also will facilitate aggregation and monitoring of the positions of security-based swap counterparties, which could be of significant benefit to the Commission and other relevant authorities.

The time stamp and transaction ID requirements under Rules 901(f) and 901(g), respectively, should facilitate data management by the registered SDR, as well as market supervision and oversight by the Commission and other regulatory authorities. The transaction ID required by Rule 901(g) also will provide an important benefit by facilitating the linking of subsequent, related security-based swap transactions that may be submitted to a registered SDR (*e.g.,* a transaction report regarding a security-based swap life cycle event, or report to correct an error in a previously submitted report). Counterparties, the registered SDR, the Commission, and other relevant authorities also will benefit by having the ability to track changes to a security-based swap over the life of the contract, as each change can be linked to the initially reported transaction using the transaction ID.

By requiring reporting of pre-enactment and transitional security-based swap transactions to the extent the information is available, Rule 901(i) will provide the Commission and other relevant authorities with insight as to outstanding notional size, number of transactions, and number and type of participants in the security-based swap market. To the extent pre-enactment and transitional security-based swap transaction information is available and reported, Rule 901(i) may contribute to the development of a well regulated market for security-based swaps by providing a benchmark against which to assess the development of the security-based swap market over time. The data reported pursuant to Rule 901(i) also could help the Commission prepare the reports that it is required to provide to Congress. At the same time, Rule 901(i) limits the scope of the transactions, and the information pertaining to those transactions, that must be reported in a manner designed to minimize undue burdens on security-based swap counterparties. First, Rule 901(i) requires reporting only of those security-based swaps that were open as of the date of enactment (July 21, 2010) or opened thereafter. As discussed in Section II(C)(2), *supra,* Rule 901(i) requires reporting of the information required by Rules 901(c) and 901(d) only to the extent such information is available. Finally, the duty to report historical security-based swaps in a particular asset class is triggered only when there exists a registered SDR that can accept security-based swaps in that asset class.

[1223] *See supra* notes 11–12 and accompanying text.

[1224] Such relevant authorities are enumerated in Section 13(n)(5)(G) of the Exchange Act, 15 U.S.C. 78m(n)(5)(G). *See supra* note 64.

[1225] *See supra* notes 160 and 162.

b. Programmatic Costs

i. Reporting Security-Based Swap Transactions to a Registered SDR—Rule 901

The security-based swap reporting requirements contained in Rule 901 will impose initial and ongoing costs on reporting sides.[1226] The Commission continues to believe that certain of these costs would be a function of the number of reportable events and the data elements required to be submitted for each reportable event. The Commission continues to believe that security-based swap market participants will face three categories of costs to comply with Rule 901. First, each reporting side will likely have to establish and maintain an internal OMS capable of capturing relevant security-based swap transaction information so that it could be reported. Second, each reporting side will have to implement a reporting mechanism. Third, each reporting side will have to establish an appropriate compliance program and support for operating any OMS and reporting mechanism.[1227] Such systems and mechanisms would likely be necessary to report data within the timeframe set forth in Rule 901(j), as it is unlikely that manual processes could capture and report the numerous required data elements relating to a security-based swaps. Many market participants may already have OMSs in place to facilitate voluntary reporting of security-based swap transactions or clearing activity. As a result, any additional costs related to systems and infrastructure will be limited to those reporting sides that either invest in new systems or must upgrade existing systems to meet minimum requirements for reporting. To the extent that the cost estimates discussed below do not take this cost limiting fact into account, they are an upper bound for the estimated costs.

Although the Commission initially estimated that there would be 1,000 reporting sides,[1228] in the Cross-Border Proposing Release the Commission revised that estimate to 300.[1229] No comments were received on the number of entities that would be reporting sides under Regulation SBSR. The Commission notes that, since issuing the Regulation SBSR Proposing Release, the Commission has obtained additional and more granular data regarding its estimate of the number of reporting sides. These historical data suggest that, among these 300 reporting sides, approximately 50 are likely to be required to register with the Commission as security-based swap dealers and up to five are likely to register as major security-based swap participants.[1230] These data further suggest that these 55 potential registrants likely will account for the vast majority of recent security-based swap transactions and transaction reports that will need to be reported by reporting sides, and that there are only a limited number of security-based swap transactions that do not include at least one of these potential registrants on either side.[1231]

The Commission estimates that internal order management costs related to Rule 901 will result in initial one-time aggregate costs of approximately $30,600,000, which corresponds to approximately $102,000 for each reporting side.[1232] The Commission continues to estimate that the cost to establish and maintain connectivity to a registered SDR to facilitate the reporting required by Rule 901 would impose an annual (first-year and ongoing) aggregate cost of approximately $60,000,000, which corresponds to $200,000 for each reporting side.[1233] The Commission continues to estimate, as a result of having to establishing a reporting mechanism for security-based swap transactions, reporting sides will experience certain development, testing and support costs. Such costs would amount to an initial one-time aggregate cost of approximately $14,700,000, which corresponds to an initial one-time cost of approximately $49,000 for each reporting side.[1234] The Commission estimates that internal order management costs related to Rule 901 will impose ongoing annual aggregate costs of approximately $23,100,000, which corresponds to approximately $77,000 per reporting side.[1235] In addition, the Commission estimates that all reporting sides will incur an initial and ongoing aggregate annual cost of $300,000, which corresponds to $1,000 for each reporting side.[1236]

The Commission, in the Regulation SBSR Proposing Release, estimated that reporting specific security-based swap transactions to a registered SDR as required by Rule 901 will impose an annual aggregate cost (first-year and ongoing) of approximately $5,400 for each reporting party.[1237] This estimate was revised in the Cross-Border Proposing Release and this adopting release to reflect improved information

[1226] Certain estimates used throughout this Section XXII (*e.g.,* the number of impacted entities, the number of reportable events, and the hourly cost rates used for each job category) have been updated from those estimated in the Cross-Border Proposing Release to reflect the rule text of Regulation SBSR, as adopted, as well as additional information and data now available to the Commission.

[1227] *See also* Regulation SBSR Proposing Release, 75 FR 75264.

[1228] *See id.* at 75247.

[1229] *See* Cross-Border Proposing Release, 78 FR 31113.

[1230] *See id.* at 31103.

[1231] As a result, the Commission generally will use 300 as an estimate of the number of reporting sides for §§ 900–909 of Regulation SBSR. In cases where a rule is more limited in its application, for example Rule 906(c), the Commission may use a different number that reflects some subset of the estimated 300 reporting sides.

[1232] This estimate is based on the following: [((Sr. Programmer (160 hours) at $303 per hour) + (Sr. Systems Analyst (160 hours) at $260 per hour) + (Compliance Manager (10 hours) at $283 per hour) + (Director of Compliance (5 hours) at $446 per hour) + (Compliance Attorney (20 hours) at $334 per hour)) × 300 reporting sides)] = $30,546,000, or approximately $30,600,000, or approximately $102,000 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75264. These estimates have been adjusted to reflect the Commission's new estimate of the number of reporting sides. All hourly cost figures are based upon data from SIFMA's Management & Professional Earnings in the Securities Industry 2013 (modified by the SEC staff to account for an 1800-hour-work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead).

[1233] This estimate is based on discussions of Commission staff with various market participants, as well as the Commission's experience regarding connectivity between securities market participants for data reporting purposes. The Commission derived the total estimated expense from the following: ($100,000 hardware- and software-related expenses, including necessary backup and redundancy, per SDR connection) × (2 SDR connections per reporting side) × (300 reporting sides) = $60,000,000, or $200,000 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75265. These estimates have been adjusted to reflect the Commission's new estimate of the number of reporting sides.

[1234] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer (80 hours) at $303 per hour) + (Sr. Systems Analyst (80 hours) at $260 per hour) + (Compliance Manager (5 hours) at $283 per hour) + (Director of Compliance (2 hours) at $446 per hour) + (Compliance Attorney (5 hours) at $334 per hour) × (300 reporting sides)] = $14,705,100, or approximately $14,700,000, or approximately $49,000 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75265, adjusted to reflect the Commission's new estimate of the number of reporting sides.

[1235] This estimate is based on the following: [((Sr. Programmer (32 hours) at $303 per hour) + (Sr. Systems Analyst (32 hours) at $260 per hour) + (Compliance Manager (60 hours) at $283 per hour) + (Compliance Clerk (240 hours) at $64 per hour) + (Director of Compliance (24 hours) at $446 per hour) + (Compliance Attorney (48 hours) at $334 per hour)) × 300 reporting sides)] = $23,127,600, or approximately $23,100,000, or approximately $77,000 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75264–5, adjusted to reflect the Commission's new estimate of the number of reporting sides.

[1236] This estimate is based on discussion of Commission staff with various market participants and is calculated as follows: [$250/gigabyte of storage capacity × (4 gigabytes of storage) × (300 reporting sides)] = $300,000, or $1,000 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75265, adjusted to reflect the Commission's new estimate of the number of reporting sides.

[1237] *See* Regulation SBSR Proposing Release, 75 FR 75208, notes 195 and 299.

relating to the number of transactions and reporting sides. The Commission believes that the cost of reporting initial security-based swap transactions under Rule 901(c) will be approximately $340,000, or approximately $1,100 per reporting side.[1238] The Commission further believes that the cost of reporting life cycle events under Rule 901(e) will be approximately $415,000, or approximately $1,400 per reporting side.[1239] As a result, the Commission believes that the total cost (first-year and ongoing) of reporting security-based swap transactions under Rule 901, as adopted, will be approximately $750,000, or $2,500 per reporting side.[1240]

The Commission estimates that designing and implementing an appropriate compliance and support program will impose an initial one-time aggregate cost of approximately $16,200,000, which corresponds to a cost of approximately $54,000 for each reporting side.[1241]

The Commission estimates that maintaining its compliance and support program would impose an ongoing annual aggregate cost of approximately $11,550,000, which corresponds to a cost of approximately $38,500 for each reporting side.[1242]

Summing these costs, the Commission estimates that the initial, aggregate annual costs associated with Rule 901 would be approximately $157,200,000, which corresponds to approximately $524,000 per reporting side.[1243] The Commission estimates that the ongoing aggregate annual costs associated with Rule 901 will be approximately $95,700,000, which corresponds to approximately $319,000 per reporting side.[1244]

The Commission continues to believe that the costs associated with required reporting pursuant to Regulation SBSR could represent a barrier to entry for new, smaller firms that might not have the ability to comply with the proposed reporting requirements or for whom the expected benefits of compliance might not justify the costs of compliance. To the extent that Regulation SBSR might deter new firms from entering the security-based swap market, this would be a cost of the regulation and could negatively impact competition. Nevertheless, the Commission continues to believe that the reporting requirements will not impose insurmountable barriers to entry, as firms that are reluctant to acquire and build reporting infrastructure could engage with third-party service providers to carry out any reporting duties incurred under Regulation SBSR.[1245]

In the Cross-Border Proposing Release, the Commission stated its preliminary belief that the infrastructure-related costs identified in the Regulation SBSR Proposing Release associated with Rule 901, on a per-entity basis, would remain largely unchanged as a result of the re-proposal. The Commission preliminarily estimated and continues to believe that the marginal burden of reporting additional transactions once a respondent's reporting infrastructure and compliance systems are in place would be *de minimis* when compared to the costs of putting those systems in place and maintaining them over time. This is because the only additional costs of reporting an individual transaction would be entering the required data elements into the firm's OMS, which could subsequently deliver the required transaction information to a registered SDR. In many cases, particularly with increased standardization of instruments and use of electronic trading, transaction information could more frequently be generated and maintained in electronic form, which could then be provided to a registered SDR through wholly automated processes. The Commission does not believe that the additional changes made to Rule 901 in this adopting release will have any measureable impact on the costs previously discussed in both the Regulation SBSR Proposing Release and the Cross-Border Proposing Release. As a result, the Commission believes that these previous estimates remain applicable.

In the Cross-Border Proposing Release, the Commission noted that each reporting side would be required to report, on average, more security-based swap transactions than envisioned under the original proposal. The Commission further noted that smaller unregistered counterparties, that would have been required to report a small number of security-based swap transactions under the original proposal would, under re-proposed Rule 901(a), be less likely to have to incur reporting duties under Regulation SBSR, and thus less likely to have to incur the initial infrastructure-related costs of reporting.[1246] The Commission noted its

[1238] The Commission believes that 900,000 of the 2 million reportable events will be the result of reporting the initial security-based swap transaction under Rule 901(c). As a result, the Commission estimates: ((900,000 × 0.005 hours per transaction)/(300 reporting sides)) = 15 burden hours per reporting side, or 4,500 total burden hours. The resulting cost of such reporting would be: [((Compliance Clerk (7.5 hours) at $64 per hour) + (Sr. Computer Operator (7.5 hours) at $87 per hour)) × (300 reporting sides)] = approximately $340,000, or $1,133 per reporting side.

[1239] The Commission believes that 1,100,000 of the 2 million reportable events will be the result of reporting life cycle events under Rule 901(e). As a result, the Commission estimates: ((1,100,000 × 0.005 hours per transaction)/(300 reporting sides)) = 18.33 burden hours per reporting side, or 5,500 total burden hours. The resulting cost of such reporting would be: [((Compliance Clerk (9.17 hours) at $64 per hour) + (Sr. Computer Operator (9.17 hours) at $87 per hour)) × (300 reporting sides)] = approximately $415,000, or $1,383 per reporting side.

[1240] The Commission believes that the per reportable event transaction cost will not change and that only approximately 2 million of these events will be reported by the reporting sides. As a result, the Commission now estimates: ((2 million × 0.005 hours per transaction)/(300 reporting sides)) = 33.3 burden hours per reporting side, or 10,000 total burden hours. The Commission therefore estimates the total cost to be: [((Compliance Clerk (16.7 hours) at $64 per hour) + (Sr. Computer Operator (16.7 hours) at $87 per hour)) × (300 reporting sides)] = approximately $750,000, or $2,500 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75208, notes 195 and 299. These estimates have been adjusted to reflect the Commission's new estimates of the number of reporting sides and number of reportable events.

[1241] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer (100 hours) at $303 per hour) + (Sr. Systems Analyst (40 hours) at $260 per hour) + (Compliance Manager (20 hours) at $283 per hour) + (Director of Compliance (10 hours) at $446 per hour) + (Compliance Attorney (10 hours) at $334 per hour) × (300 reporting sides)] = approximately $16,200,000, or $54,000 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75266. These estimates have been adjusted to reflect the Commission's new estimate of the number of reporting sides.

[1242] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer (16 hours) at $303 per hour) + (Sr. Systems Analyst (16 hours) at $260 per hour) + (Compliance Manager (30 hours) at $283 per hour) + (Compliance Clerk (120 hours) at $64 per hour) + (Director of Compliance (12 hours) at $446 per hour) + (Compliance Attorney (24 hours) at $334 per hour) × (300 reporting sides)] = $11,563,800, or approximately $11,550,000, or approximately $38,500 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75266. These estimates have been adjusted to reflect the Commission's new estimate of the number of reporting sides.

[1243] This estimate is based on the following: (($102,000 + $200,000 + $49,000 + $2,500 + $54,000 + $77,000 + $1,000 + $38,500) × (300 reporting sides)) = $157,200,000, which corresponds to approximately $524,000 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75264–6. These estimates have been adjusted to reflect the Commission's new estimate of the number of reporting sides.

[1244] This estimate is based on the following: (($200,000 + $2,500 + $77,000 + $1,000 + $38,500) × (300 reporting sides)) = $95,700,000, or approximately $319,000 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75264–66. These estimates have been adjusted to reflect the Commission's new estimate of the number of reporting sides.

[1245] *See also* Regulation SBSR Proposing Release, 75 FR 75266.

[1246] The Commission notes, however, that non-reporting sides would be required to provide certain information about a reportable transaction. *See* Rule 906(a), as originally proposed (requiring reporting, if applicable, of participant ID, broker ID, trading

preliminary agreement with certain commenters[1247] that basing the reporting duty primarily on status as a security-based swap dealer or major security-based swap participant rather than on whether or not the entity is a U.S. person would, in the aggregate, reduce costs to the security-based swap market.

In the Cross-Border Proposing Release, the Commission noted two additional factors that could serve to limit the average per-transaction costs across all affected entities. First, to the extent that security-based swap instruments become more standardized and trade more frequently on electronic platforms (rather than manually), the act of reporting transactions to a registered SDR should become less costly. These trends are likely to reduce the number of transactions that would necessitate the manual capture of bespoke data elements, which is likely to take more time and be more expensive than electronic capture. Second, the larger entities that would incur additional reporting duties under re-proposed Rules 901(a) and 908(a)(1)(iii)—*i.e.,* non-U.S. person security-based swap dealers and major security-based swap participants—can benefit from certain economies of scale in carrying out reporting duties that might elude smaller, unregistered counterparties. The Commission continues to believe that these factors could limit the average per-transaction costs across all affected entities. However, the extent of these effects is difficult to quantify. It is difficult to predict how many transactions each reporting side will report under manual versus electronic capture. Furthermore, the Commission currently does not have information about the exact reporting systems and the associated cost structures of reporting sides. Therefore, while the Commission has considered the likely effects of electronic trade capture and more concentrated reporting obligations qualitatively, as above, the Commission is not able to quantify these effects.

After reviewing comment letters received in response to the Regulation SBSR Proposing Release and the Cross-Border Proposing Release, as well as evaluating the most recent data available to the Commission, the Commission believes that these cost estimates, as adjusted to account for more recent data on the number of reporting sides, remain valid. The Commission has received no comments to the contrary.

ii. Registered SDRs—Receipt and Processing of Security-Based Swap Transactions—Rule 901

Rule 901, as adopted, requires all security-based swaps that are covered transactions[1248] to be reported to a registered SDR, establishes a ''reporting hierarchy'' that determines which side must report the transaction, and sets out the data elements that must be reported. Together, sections (a), (b), (c), (d), (e), and (h) of Rule 901 set forth the parameters that govern how reporting sides must report security-based swap transactions. Rule 901(i) addresses the reporting of pre-enactment and transitional security-based swaps.

In both the Regulation SBSR Proposing Release and the Cross-Border Proposing Release, the Commission discussed the potential costs to registered SDRs resulting from Rule 901. The Commission preliminarily estimated that the number of registered SDRs would not exceed ten in both releases. No comments discussed the potential number of entities that might register with the Commission as SDRs and incur duties under Regulation SBSR. The Commission continues to believe that it is reasonable to estimate ten registered SDRs for purposes of evaluating the costs and benefits of Regulation SBSR.

As discussed above, Rule 901 imposes certain minor, additional requirements on registered SDRs, in addition to the major duties imposed on SDRs by Rules 902 and 907 of Regulation SBSR and the rules adopted as part of the SDR Adopting Release. Rule 901(f) requires a registered SDR to time stamp, to the lowest second increment practicable but in any event no greater than a second, its receipt of any information submitted to it pursuant to Rules 901(c), (d), or (e). Rule 901(g) requires a registered SDR to assign a transaction ID to each security-based swap reported or establish or endorse a methodology for transaction IDs to be assigned by third parties. Consequently, the Commission estimates that Rules 901(f) and 901(g) will impose an initial aggregate one-time cost of approximately $360,000, which corresponds to $36,000 per registered SDR.[1249] With regard to ongoing costs, the Commission estimates that Rules 901(f) and 901(g) would impose an ongoing aggregate annual cost of $455,000, which corresponds to $45,500 per registered SDR.[1250] This figure represents an estimate of the support and maintenance costs for the time stamp and transaction ID assignment elements of a registered SDR's systems.

The Commission estimates that the initial aggregate annual cost associated with Rules 901(f) and 901(g) will be approximately $815,000, which corresponds to $81,500 per registered SDR.[1251] The above costs per registered SDR are generally consistent with those set forth in the Cross-Border Proposing Release. It is possible, however, that the costs may be lower than previously estimated, as the Commission is now estimating fewer reportable events per year (5 million in the Cross-Border Proposing Release versus 2 million events to be reported by the reporting sides).[1252] In addition, to the extent that those persons planning on registering as SDRs have already expended resources in anticipation of the adoption of Regulation SBSR and as a result of CFTC regulations that are already in place, the costs to become a registered SDR could be significantly lower. As a result, the Commission's estimates should be viewed as an upper bound of the potential costs of Regulation SBSR.

After reviewing comment letters received in response to the Regulation SBSR Proposing Release and Cross-Border Proposing Release, as well as evaluating the most recent data available to the Commission, the

desk ID, and trader ID). *See also* Regulation SBSR Proposing Release, 75 FR 75221 (discussing rationale for proposed Rule 906(a)).

[1247] *See, e.g.,* DTCC II at 8; ICI Letter at 5; Cleary III at 31. *See also* Vanguard Letter at 6; Cleary III at 28 (stating that requiring U.S. end users to report security-based swaps entered into with non-U.S. person security-based swap dealers would be unduly burdensome for end users and could negatively impact the competitiveness of affected U.S. markets).

[1248] *See supra* notes 11–12 and accompanying text.

[1249] This figure is calculated follows: [((Sr. Programmer (80 hours) at $303 per hour) + (Sr. Systems Analyst (20 hours) at $260 per hour) + (Compliance Manager (8 hours) at $283 per hour) + (Director of Compliance (4 hours) at $446 per hour) + (Compliance Attorney (8 hours) at $334 per hour) × (10 registered SDRs)] = $361,600, or approximately $360,000. All hourly cost figures are based upon data from SIFMA's Management & Professional Earnings in the Securities Industry 2013 (modified by the SEC staff to account for an 1,800-hour-work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead). *See also* Regulation SBSR Proposing Release, 75 FR 75266, note 309.

[1250] This figure is calculated as follows: [((Sr. Programmer (60 hours) at $303 per hour) + (Sr. Systems Analyst (48 hours) at $260 per hour) + (Compliance Manager (24 hours) at $283 per hour) + (Director of Compliance (12 hours) at $446 per hour) + (Compliance Attorney (8 hours) at $334 per hour) × (10 registered SDRs)] = $454,760, or approximately $455,000. *See also* Regulation SBSR Proposing Release, 75 FR 75266, note 310.

[1251] This figure is based on the following: (($36,160 + $45,476) × (10 registered SDRs) = $816,360, or approximately $815,000, which corresponds to $81,636, or approximately $81,500 per registered SDR. *See also* Regulation SBSR Proposing Release, 75 FR 75266, note 311.

[1252] *See supra* Section XXII (PRA discussion revising the Commission's estimate of the number of reportable events).

Commission continues to believe that its overall approach to the estimate of costs imposed on registered SDRs remain valid. The Commission received no comments to the contrary.

2. Public Dissemination

Rule 902 requires the public dissemination of security-based swap transaction information. Rule 902(a), as adopted, sets out the core requirement that a registered SDR, immediately upon receipt of a transaction report of a security-based swap or life cycle event, must publicly disseminate information about the security-based swap or life cycle event, plus any condition flags contemplated by the registered SDR's policies and procedures that are required by Rule 907.

a. Programmatic Benefits

There are benefits to public dissemination of security-based swap information, as is required by Rule 902. Among other things, by reducing information asymmetries, post-trade transparency has the potential to facilitate price discovery and price competition,[1253] lower implicit transaction costs,[1254] improve valuation of security-based swap products, and increase liquidity in the security-based swap market.[1255]

Requiring public dissemination of security-based swap transactions will provide all market participants and market observers with more extensive and more accurate information upon which to make trading and valuation determinations. In the absence of post-trade transparency, larger dealers possess private information in the form of transactions prices and volumes, and larger dealers enjoy a greater informational advantage than smaller dealers. As noted above in Section XXII(B), the bulk of security-based swap activity is dealer-intermediated. Non-dealers and small dealers who perceive the informational advantage of their counterparties may be less willing to trade. By reducing the information advantage of large dealers, the public dissemination of security-based swap data may improve the negotiating position of smaller market participants such as non-dealers and small dealers, allowing them to access liquidity and risk sharing opportunities in the security-based swap market at lower implicit transaction costs.

While the Commission has not yet adopted rules governing trading of security-based swaps on centralized venues such as exchanges and SB SEFs, post-trade transparency may have particular benefits for exchange or SB SEF trading.[1256] In particular, providers of liquidity can use publicly disseminated transaction data as a key input into their orders and quotations, thereby increasing the efficiency of price formation. Market participants seeking liquidity can use recent last-sale prices in the same or similar products as a basis for initiating negotiations with liquidity providers. Liquidity seekers also can use public dissemination of other market participants' recent transactions in the same or similar products to evaluate the quality of quotes being offered or the quality of an execution given by a liquidity provider. Furthermore, public dissemination of all transactions may suggest to all market participants profitable opportunities to offer or take liquidity, based on the prices at which recent transactions were effected.

Moreover, the Commission believes that post-trade pricing and volume information could allow valuation models to be adjusted to reflect how security-based swap counterparties have valued a security-based swap product at a specific moment in time. Post-trade transparency of security-based swap transactions also could improve market participants' and market observers' ability to value security-based swaps, especially in opaque markets or markets with low liquidity where recent quotations or last-sale prices may not exist or, if they do exist, may not be widely available. For example, a single-name CDS contract that expires in five years may yield information relevant for pricing other five-year CDS on the same firm, and will also provide information on default probabilities that may help price other CDS on the same firm with different maturities, or on other firms in the same industry.

By improving valuations, post-trade transparency of security-based swap transactions could contribute to more efficient capital allocation. In particular, under the post-trade transparency regime of Regulation SBSR, market observers, whether or not they engage in the security-based swap transactions, could use information produced and aggregated by the security-based swap market as an input to both real investment decisions as well as financial investments in related markets for equity and debt.[1257] Improved valuation, together with more efficient prices, that may arise as a result of publicly disseminated transaction information, could directly contribute to efficiency of capital allocation by firms whose obligations are referenced by security-based swaps.

A number of studies of the corporate bond market have found that post-trade transparency, resulting from the introduction of TRACE, has reduced implicit transaction costs.[1258] Post-trade transparency could have the same effect in the security-based swap market. The Commission acknowledges that the differences between the security-based swap market and other securities markets might be sufficiently great that post-trade transparency might not have the same effects in the security-based swap market.[1259] Nevertheless, similarities in the way the security-based swap market and corporate bond market are structured—both markets evolved as dealer-centric OTC markets with limited pre- or post-trade transparency—suggest that some of the benefits that result from post-trade transparency in the corporate bond market also would arise in the security-based swap market as well.

Public dissemination of security-based swap transactions is also designed to promote better valuation of security-based swaps themselves, as well as of underlying and related assets. In

[1253] *See* Edwards, *et al., supra* note 1223 *supra.*

[1254] As noted in Section XXII(B)(1)(b), dealing activity in the single-name CDS market is concentrated among a small number of firms that each enjoy informational advantages as a result of the large quantity of order flow they privately observe. Implicit transaction costs are the difference between the transaction price and the fundamental value, which could reflect adverse selection or could reflect compensation for inventory risk. In addition to these implicit transaction costs, security-based swap market participants may face explicit transaction costs such as commissions and other fees that dealers might charge non-dealers for access to the market.

[1255] *See infra* Section XXII(D)(2)(b). *See also* Regulation SBSR Proposing Release, 75 FR 75267.

[1256] The size of benefits arising from the use of publicly disseminated transaction data for SB SEF trading depend on the trading models that SB SEFs support pursuant to rules ultimately adopted by the Commission. *See* SB SEF Proposing Release, 76 FR 10948.

[1257] *See* Philip Bond, Alex Edmans, and Itay Goldstein, ''The Real Effects of Financial Markets,'' Annual Review of Financial Economics, Vol. 4 (October 2012) (reviewing the theoretical literature on the feedback between financial market price and the real economy). *See also* Sugato Chakravarty, Huseyin Gulen, and Stewart Mayhew, ''Informed Trading in Stock and Option Markets,'' Journal of Finance, Vol. 59, No. 3 (2004) (estimating that the proportion of information about underlying stocks revealed first in option markets ranges from 10% to 20%).

[1258] *See, e.g.,* Edwards, *et al., supra* note 1223; Hendrik Bessembinder, William F. Maxwell, & Kumar Venkataraman, *Market Transparency, Liquidity Externalities, and Institutional Trading Costs in Corporate Bonds,* J. of Fin. Econ., Vol. 82, at 251–288 (2006).

[1259] In the Regulation SBSR Proposing Release, the Commission requested comment on whether post-trade transparency would have a similar effect on the security-based swap market as it has in other securities markets—and if not, why not. No commenters responded to the Commission's request.

transparent markets with sufficient liquidity, valuations generally can be derived from recent quotations and/or last-sale information. However, in opaque markets or markets with low liquidity—such as the current market for security-based swaps—recent quotations or last-sale information may not exist for many products or, if they do exist, may not be widely available.[1260] Therefore, market participants holding assets that trade in opaque markets or markets with low liquidity frequently rely instead on pricing models to value their positions. These models could be imprecise or be based on assumptions subject to the evaluator's discretion. Thus, market participants holding the same or similar assets but using different valuation models might arrive at significantly different valuations.

All other things being equal, valuation models—particularly for assets in illiquid markets, such as corporate bonds or security-based swaps—that include last-sale information in the valuation models generally will be more informative than models that do not or cannot include such inputs. Models without such inputs could be imprecise or be based on assumptions subject to the evaluator's discretion without having last-sale information to help identify or correct flawed assumptions. As discussed in Section XXII(B)(1)(d), valuation models typically have many inputs even in the absence of last-sale information. However, in general, models improve if the information set is broadened to include additional data related to fundamental value, and last-sale information is of particular relevance for pricing models. Research suggests that post-trade transparency helps reduce the range of valuations of assets that trade infrequently,[1261] and it is likely that the security-based swap market participants and market observers will devise means to incorporate last-sale reports of the asset to be valued, reports of related assets, or reports of benchmark products that include the asset to be valued or closely related assets into their valuation models. This should result in more accurate valuations of security-based swaps generally, as all market participants and market observers would have the benefit of knowing how counterparties to a security-based swap valued the security-based swap at a specific moment in the recent past.

In addition, post-trade transparency of security-based swaps that are CDS should promote better valuation of debt instruments and better understanding of the creditworthiness of debt issuers generally. CDS are contracts that offer protection against events of default by a debt issuer, such as a bankruptcy, debt restructuring, or a failure to pay. All other things being equal, CDS protection on a more creditworthy issuer costs less than CDS protection on a less creditworthy issuer. Furthermore, the cost of CDS protection on a single issuer may change over time: If the issuer's financial position strengthens, it is less likely to default on its debt and the cost of CDS protection on the issuer generally will decrease; if the issuer's financial condition weakens, the cost of CDS protection on the issuer generally will increase. Mandatory post-trade transparency of CDS transactions will offer market participants and market observers the ability to assess the market's view of the creditworthiness of entities underlying CDS contracts, which often are large and systemically significant debt issuers. Currently, last-sale information of CDS transactions generally is known only to the participants involved in a transaction (such as dealers who execute with clients and brokers who may be involved in negotiating transactions). Public dissemination of security-based swap transactions—both CDS and equity-based swaps—as required by Regulation SBSR, will reduce the information asymmetry between insiders who are involved in particular transactions and all others, and is thus designed to promote greater price efficiency in security-based swap markets, the related index swap markets, and the markets for the underlying securities.[1262]

Public dissemination of transactions in CDS that are based on reference entities that issue TRACE-eligible debt securities should reinforce the pricing signals derived from individual transactions in debt securities generated by TRACE. Since prices in debt securities of an issuer and prices of CDS with that debt security as reference entity are related, any pricing signal received as a result of a trade in one asset market may inform prices in the other. In addition, if prices of debt securities in TRACE and last-sale information of related CDS are not consistent with each other, market participants may avail themselves of arbitrage opportunities across these two markets, thereby aligning the respective prices and enhancing price efficiency in both markets. Similarly, public dissemination of transactions in single-name security-based swaps should reinforce the pricing signals derived from public dissemination of transactions in index swaps, where the index includes those individual securities. In addition, post-trade transparency of security-based swap CDS under Regulation SBSR should indirectly bring greater transparency into the market for debt instruments (such as sovereign debt securities) that are not subject to mandatory public dissemination through TRACE or any other means by providing indirect pricing information. For example, last-sale information for CDS referencing sovereign debt may inform prices of the underlying sovereign debt.

b. Programmatic Costs

Market participants may experience costs as a result of revealing the true size of their trades if public dissemination of this information makes it more difficult to hedge their positions. Further, public dissemination of true transaction sizes could result in higher costs if it allows market participants to infer the identities of particular counterparties. Thus, some commenters have argued for dissemination of the notional amount of block trades through a ''masking'' or ''size plus'' convention comparable to that used by TRACE, in which transactions larger than a specified size would be reported as ''size plus.''[1263] The Commission considered this alternative, but has elected to require a registered SDR to publicly disseminate (for all dissemination-eligible transactions[1264]), immediately upon receipt of the transaction report, all of the elements required by Rule 901(c), including the true notional amount of the transaction. The Commission notes, first of all, that a dissemination cap could deprive the market of important information about overall exposure. With a cap in place, market participants would not have information about the true size of very large trades, thereby reducing the precision with which they could

[1260] *See supra* Section XXII(B)(1)(b) (describing current level of trading activity and liquidity in the security-based swap market).

[1261] *See* Gjergji Cici, Scott Gibson, and John J. Merrick, Jr., ''Missing the Marks? Dispersion in Corporate Bond Valuations Across Mutual Funds,'' Journal of Financial Economics, Volume 101, Issue 1 (July 2011), at 206–26.

[1262] *See, e.g.,* Chakravarty, *et al.,* note 1258, *supra* (estimating that the proportion of information about underlying stocks revealed first in option markets ranges from 10 to 20%).

[1263] *See* WMBAA II at 7; ISDA/SIFMA I at 5; ISDA/SIFMA Block Trade Study at 2, 26–27; Vanguard Letter at 5; Goldman Sachs Letter at 6; SIFMA I at 5; J.P. Morgan Letter at 12–13; MFA I at 4; MFA III at 8; UBS Letter at 2; FIA/FSF/ISDA/SIFMA Letter at 6.

[1264] *See* Rule 902(c) (requiring that certain types of security-based swaps not be publicly disseminated).

estimate the level of risk arising from those large trades. Furthermore, as noted above in Section VII(B)(4), the Commission believes that a 24-hour timeframe for reporting of transaction information during the interim phase of Regulation SBSR should address any concerns about disseminating the true notional amount of any transaction and give market participants who choose to hedge adequate time to accomplish a majority of their hedging activity [1265] before transaction data are publicly disseminated. During the interim phase, the Commission will be able to collect and analyze transaction information to develop an understanding of how market participants are reacting to the introduction of mandated post-trade transparency.

Under Rule 902(a), a registered SDR will be required to publicly disseminate a condition flag indicating whether two counterparties to a security-based swap are registered security-based swap dealers. The Commission received one comment expressing concern that disseminating such information would reduce the anonymity of counterparties, ultimately resulting in ''worse pricing and reduced liquidity for end-users.'' [1266] Public dissemination of this information will indicate that a transaction involved two counterparties that are dealers. Although flagging transactions between two registered security-based swap dealers does indeed provide information to the public that the transaction involved two dealers, thus restricting the set of possible counterparties, the Commission believes that, since the majority of transactions in the security-based swap market are between dealers, market observers are unlikely to be able to identify particular counterparties using this information.

Another potential cost of post-trade transparency is that it may increase inventory risks. Dealers often enter trades with their customers as a liquidity supplier. Dealers trying to hedge inventory following a trade might be put in a weaker bargaining position relative to subsequent counterparties if transactions prices and volumes are publicly-disseminated. With mandated post-trade transparency, the market will see when a large transaction or a transaction in an illiquid security occurs and is aware that the dealer who took the other side may attempt to hedge the resulting position. As a result, other market participants may change their pricing unfavorably for the dealer, making it more expensive for the dealer to hedge its position. Dealers could respond either by raising the liquidity premium charged to their clients or refusing to accommodate such trades. Such behavior could lead to lower trading volume or reduce the ability of certain market participants to manage risk, either of which could adversely affect all market participants. An increase in post-trade transparency could also drive trades to other markets or instruments that offer the opacity desired by traders, which could increase fragmentation, since trading would occur at more trading centers, or potentially reduce liquidity. This possibility is consistent with the argument that large, informed traders may prefer a less transparent trading environment that allows them to minimize the price impact of their trades. Public dissemination of security-based swap transaction information, therefore, could cause certain market participants to trade less frequently or to exit the market completely. A reduction in market activity by these participants, especially if they are large, informed traders, could have an adverse effect on market liquidity.

We are currently unable to quantify the costs associated with market exit or reduced liquidity that might result from post-trade transparency. This is due to two factors: (1) Lack of robust data; and (2) lack of experimental conditions necessary for identifying the impact of post-trade transparency on the costs of hedging. As noted above, Commission staff has undertaken a study that attempts to identify instances of hedging behavior by dealers in the single-name CDS market. Subject to the data limitations described in the study, the low levels of such behavior suggest that, in aggregate, post-trade transparency is unlikely to drive down liquidity or increase the liquidity premium charged by dealers to non-dealers as a result of increasing the cost of hedging.[1267] Commission staff has also undertaken a study of the effects of the introduction of mandatory post-trade transparency in the index CDS market pursuant to CFTC rules. Subject to the data limitations in the study, and the fact that the security-based swap and the swap markets are related but not identical, staff found little empirical evidence that the introduction of mandatory post-trade transparency in the index CDS market resulted in reduced trading activity, liquidity, or risk exposure in the index CDS market.[1268] Moreover, studies of the corporate bond market, another largely OTC market, do not find evidence of market exit or reduced liquidity associated with post-transparency.[1269]

Another potential cost of post-trade transparency as required under Rule 902 is that market observers could misinterpret or place undue importance on particular last-sale information that might not accurately reflect the market. For example, if a large market participant failed, it could be required to liquidate its portfolio at ''fire sale'' prices. If market observers were not aware of any unusual conditions surrounding particular transaction prints, they might interpret fire sale prices to indicate changes to the economic fundamentals of security-based swap positions that they hold. If some of these market participants mark down the value of their portfolios, the result could be additional margin calls and further market stress. In these circumstances, use of valuation models that include last-sale data, but do not condition those data on the information about unusual conditions could lead to market de-stabilization.[1270]

Rule 902(a) requires a registered SDR to publicly disseminate a transaction report of any security-based swap immediately upon receipt of transaction information about the security-based swap, except in in certain limited circumstances.[1271] The published transaction report must consist of all the information reported pursuant to Rule 901(c), plus the execution time stamp and any necessary flags required by the registered SDR to which the transaction is reported.

Implementing and complying with the public dissemination requirement of Rule 902 will add 20% to the start-up and ongoing operational expenses that would otherwise be required of a registered SDR.[1272] In particular, the Commission continues to estimate that the initial one-time aggregate costs for development and implementation of the systems needed to disseminate the required transaction information would be $20,000,000, which corresponds to $2,000,000 per registered SDR. Further, the Commission continues to estimate that aggregate annual costs for systems and connectivity upgrades associated

[1265] Market participants typically hedge only a small fraction of large trades and, if they hedge, they tend to do so within one day. *See* Hedging Analysis.

[1266] ISDA IV at 16.

[1267] *See* Hedging Analysis.

[1268] *See* Analysis of Post-Trade Transparency.

[1269] *See supra* note 1259.

[1270] *See, e.g.,* Brunnermeier and Pedersen; Gromb and Vayanos, note 1177, *supra.*

[1271] *See supra* Section VI(D). In addition, registered SDRs shall not publicly disseminate reports of pre-enactment or transitional security-based swaps.

[1272] *See* SDR Adopting Release, Section VIII(D)(2). *See also* Regulation SBSR Proposing Release, 75 FR 75269.

with public dissemination would be approximately $12,000,000, which corresponds to $1,200,000 per registered SDR. Thus the initial aggregate costs associated with Rule 902 are estimated to be $32,000,000, which corresponds to $3,200,000 per registered SDR. To the extent that those market participants planning on registering as SDRs have already expended resources if they voluntarily report their transactions or because they are registered SDRs with the CFTC, the costs to become a registered SDR could be significantly lower. As a result, the Commission's estimates should be viewed as an upper bound of the potential costs of Regulation SBSR.

c. Alternative Approaches to Public Dissemination

The Commission considered alternative approaches to the public dissemination of transactions information. First, the Commission has considered, but is not adopting, an exemption from Regulation SBSR's regulatory reporting or public dissemination requirements for inter-affiliate security-based swaps, although the Commission generally believes that a registered SDR should consider establishing a flag for inter-affiliate security-based swaps to help market observers better understand the information that is publicly disseminated.[1273]

Commenters had raised concerns about the public dissemination of inter-affiliate transactions, comments that the Commission carefully considered in its adoption of Rule 902.[1274] As an example, one commenter argued that ''public reporting of inter-affiliate transactions could seriously interfere with the internal risk management practices of a corporate group'' and that ''[p]ublic disclosure of a transaction between affiliates could prompt other market participants to act in a way that would prevent the corporate group from following through with its risk management strategy by, for instance, causing adverse price movements in the market that the risk-carrying affiliate would use to hedge.'' [1275] As stated above, the Commission agrees generally that corporate groups should engage in appropriate risk management practices. However, the Commission does not agree that Regulation SBSR, as adopted, is inimical to effective risk management. The Commission notes that, during the interim phase of Regulation SBSR, all security-based swaps—regardless of size—must be reported within 24 hours from the time of execution and—except with regard to transactions falling within Rule 908(a)(2)—immediately publicly disseminated. As discussed in Section VII above, this reporting timeframe is designed, in part, to minimize any potential for market disruption resulting from public dissemination of any security-based swap transaction during the interim phase of Regulation SBSR. The Commission anticipates that, during the interim period, it will collect and analyze data concerning the sizes of transactions that potentially affect liquidity in the market. The Commission sees no basis for concluding, at this time, that inter-affiliate security-based swaps are more difficult to hedge than other types of security-based swaps, or that the hedging of these transactions presents unique concerns that would not also arise in connection with the hedging of a security-based swap that was not an inter-affiliate transaction. Therefore, the Commission does not agree with the commenters' concern that public dissemination of inter-affiliate security-based swaps will impede the ability of corporate groups to hedge.

Second, the Commission considered other mechanisms for public dissemination, but has determined not to adopt any of them.[1276] In the Regulation SBSR Proposing Release, the Commission discussed a ''first touch'' approach to public dissemination, whereby a security-based swap dealer or major security-based swap participant that is a counterparty to a security-based swap would be responsible for dissemination. Under a ''modified first touch'' approach, a platform on which a transaction was effected would be required to publicly disseminate a transaction occurring on its market. However, under either of these alternate approaches, market observers would be required to obtain and consolidate information from potentially dozens of different sources. As the Commission stated in the Regulation SBSR Proposing Release: ''Requiring registered SDRs to be the registered entities with the duty to disseminate information would produce some degree of mandated consolidation of [security-based swap] transaction data and help to provide consistency in the form of the reported information. This approach is designed to limit the costs and difficulty to market participants of obtaining and assembling data feeds from multiple venues that might disseminate information using different formats.'' [1277]

Moreover, even though the alternative approaches noted above would allow market participants to circumvent registered SDRs while fulfilling the public dissemination requirement, neither alternative would reduce costs to market participants, since reporting sides would be required to report transactions to an SDR to fulfil the regulatory reporting requirement. The Commission received no comments that disagreed with the proposed approach imposing the duty to disseminate security-based swap transaction information on registered SDRs, and has adopted it as proposed.

3. Interim Phase for Reporting and Public Dissemination

As discussed in more detail above, the rules, as adopted, establish an interim phase of Regulation SBSR. During this interim phase, all covered transactions—regardless of their notional size—must be reported to a registered SDR no later than 24 hours after the time of execution.[1278] The registered SDR will be required to publicly disseminate a report of the transaction immediately upon receipt of the information, except for the information described in Rule 902(c).

Commission staff has undertaken an analysis of the inventory management of dealers in the market for single-name CDS based on transaction data from DTCC–TIW.[1279] The analysis shows that, when large trades in single-name CDS are hedged using offsetting trades in the single-name CDS with the same reference entity, the majority of hedging activity takes places within one day.[1280] The Commission acknowledges the concerns of a commenter that this analysis does not consider hedging activity that might occur between

[1273] *See supra* Sections VI(D) and VI(G).

[1274] *See supra* Section XI(B).

[1275] Cleary II at 17.

[1276] *See* Regulation SBSR Proposing Release, 75 FR 75227–28.

[1277] *Id.*

[1278] If reporting would take place on a non-business day (*i.e.,* a Saturday, Sunday, or U.S. federal holiday), then reporting would be required by the same time on the next day that is a business day.

[1279] *See* Hedging Analysis.

[1280] The Commission staff analysis represents an update and extension of earlier work by staff of the Federal Reserve Bank of New York (Chen *et al.*), which identified same-day and next-day same-instrument dealer hedging activity within a three-month (May 1, 2010–July 31, 2010) sample of DTCC–TIW transaction data. Similar to the Commission staff analysis, these authors' results suggest that ''large customer CDS trades are not typically hedged via offsetting trades in the same instrument soon after they have been transacted.'' The authors conclude by saying that ''requiring same day reporting of CDS trading activity may not significantly disrupt same day hedging activity, since little such activity occurs in the same instrument.'' *See* Chen *et al., supra* note 510, at 17.

markets.[1281] For example, dealers may use index CDS contracts to hedge exposures in single-name CDS. However, the Commission notes that the presence of hedging opportunities in other markets—particularly more liquid markets such as the market for index CDS—may increase the speed with which dealers are able to hedge security-based swap exposures, and may limit the extent to which public dissemination of transaction data with 24 hours of execution impairs their ability to hedge large exposures.[1282]

The same commenter further argued that, if single-name CDS on a reference entity trade infrequently, dealers may not have opportunities to hedge using the same instrument in a short period of time.[1283] The Commission acknowledges that some market participants may take more than 24 hours to hedge exposures that result from large transactions in security-based swaps. As noted below, if a liquidity provider engages in a large trade in an illiquid security but cannot hedge its inventory risk within 24 hours, the result could be higher costs for liquidity provision. However, based on supplemental staff analysis of single-name CDS transaction data, the vast majority of large CDS transactions in the Hedging Analysis were written on reference entities with transaction activity occurring more than once per day, on average.[1284] Hence, based on the available data, the Commission does not conclude that the liquidity of the single-name CDS included in the Hedging Analysis was insufficient to allow dealers ample opportunities to hedge exposures within five days. Taking into consideration staff analysis and comments on this analysis, the Commission continues to believe that a 24-hour time frame for reporting of transaction information should allow market participants who choose to hedge adequate time to accomplish a majority of their hedging activity before transaction data is publicly disseminated.

Although any reporting side could take a full 24 hours to report a given trade under the interim phase, the final rules may provide incentives for reporting sides to submit trade reports in substantially less than 24 hours. In particular, as discussed above in Section VII(B)(1), because Rule 902(d) embargos transaction information until the information is transmitted to a registered SDR, any SB SEF that wants to continue the use of work-ups must ensure that transactions are reported to a registered SDR no later than the time at which a completed transaction is broadcast to the users of the SB SEF. Reporting sides may choose to report trades in less than 24 hours because their gains from work-ups exceed costs stemming from public dissemination.

a. Programmatic Benefits

The Commission notes that the interim phase of Regulation SBSR will result in increased transparency in the security-based swap market, as compared to the current market. Several commenters expressed concern that a public dissemination regime with improper block trade thresholds could harm market liquidity.[1285] A phased approach seeks to create some measure of post-trade transparency in the security-based swap market while avoiding the creation of inappropriate block standards.

This interim phase will afford the Commission the opportunity to use data made available by registered SDRs to consider the potential impact, across different security-based swap asset classes, of various public dissemination times on transaction costs, hedging activity, and price efficiency for trades involving a range of notional amounts in instruments of varying liquidity.[1286] Analysis of additional data is important for two key reasons. First, while the Commission has used available data to inform its current approach to regulatory reporting, the Commission expects the market to evolve in response to substantive regulation pursuant to Regulation SBSR and other Title VII rulemaking. In particular, additional post-trade transparency afforded by the interim phase may alter market participants' trading strategies in ways that will likely affect what constitutes an appropriate block trade threshold in an environment with post-trade transparency. Such changes to the regulatory environment for security-based swap transactions make additional data analysis critical to robust determination of block thresholds and associated dissemination delays.

Second, the Commission believes that data elements such as reporting and execution time stamps required under Rule 901 will make data collected from registered SDRs more suitable than currently available data for examining relationships between reporting delays, notional amounts and other variables of economic interest. For example, as noted by Commission staff in its analysis of inventory risk management in the security-based swap market, although the CDS transaction data currently available to the Commission includes both the date and time at which DTCC received and recorded the transaction, only the date of the execution is reported to DTCC, and not the actual time of the execution.[1287] Under Regulation SBSR, Commission staff will be able to identify not only the execution time, to the second, but also the length of time between when a transaction is executed and when a registered SDR receives the associated transaction report.

Accordingly, the Commission is directing its staff to issue a report, for

[1281] *See* ISDA IV at 15 (stating that ''participants may enter into risk mitigating transactions using other products that are more readily available at the time of the initial trade (for example CD index product [*sic*], CDS in related reference entities, bonds or loans issued by the reference entity or a related entity, equities or equity options)).'' The commenter further ''interprets the data in the study to imply that such temporary hedges in other asset classes (rather than offsetting transactions in the precise reference entity originally traded) are the norm for an illiquid market.'' *Id.*

[1282] The Commission notes that the impact of cross-market hedging may depend on the market characteristics for hedging assets. If dealers use corporate bonds to hedge large single-name CDS exposures, then the relative illiquidity of the corporate bond market may make dealers' ability to hedge sensitive to public dissemination of single-name CDS transaction information. However, the commenter did not provide support for the proposition that dealers rely on the corporate bond or equity markets to hedge single-name CDS exposure. Appropriate data are not currently available to the Commission. By contrast, if dealers use more liquid assets to hedge—such as index CDS—then the relative liquidity of the market for hedging assets may make it less likely that dealers' orders are identified as hedging demand. This, in turn, reduces the likelihood that dealers will face higher costs of hedging as a result of public dissemination of the original security-based swap transaction.

[1283] *See id.* (stating that ''If a reference entity trades less frequently than once per day, and a particular reference entity/maturity combination trades less frequently than that, it is unlikely that a dealer could hedge a large transaction using CDS in the same reference entity even over a period of five days'').

[1284] In response to this comment, Commission staff examined the average trading frequency and volume of the reference entities represented in the sample of large transactions relative to reference entities in the overall sample. According to this supplemental analysis, for over 90% of the reference entities in the sample of ''seed transactions'' (as defined in the Hedging Analysis,) transaction activity took place, on average, one or more times per day between April 2013 and March 2014. Commission staff also examined transaction activity in the six-month period prior to the sample used in the Hedging Analysis to avoid confounding its measures of trading activity with the large transactions and subsequent hedging activity it identified within the original study period. In the six months prior to April 2013, approximately 85% of reference entities in the sample of seed transactions were involved in transaction activity an average of one or more times per day.

[1285] *See supra* note 486.

[1286] *See* ISDA IV at 15 (noting that liquidity of CDS contracts on a reference entity may be a determinant of the risk management strategies of dealers attempting to hedge exposures generated when they engage in single-name CDS transactions).

[1287] *See* Hedging Analysis.

each asset class, regarding block thresholds and dissemination delays for large notional security-based swap transactions in each asset class. The reports are intended to inform the Commission's specification of criteria for determining what constitutes a block trade and the appropriate time delay for reporting block trades. The Commission will take into account the reports, along with public comment on the reports, in determining block thresholds and associated reporting delays.

Each report will be linked to the availability of data from registered SDRs in that each report must be complete no later than two years following the initiation of public dissemination from the first registered SDR in that asset class. The Commission believes that this timeframe is necessary for a thorough analysis of the transaction data. First, a two-year timeframe will help ensure that Commission staff's econometric analysis will have statistical power sufficient to draw clear conclusions about the effects of notional amount and reporting delay on price impact, hedging activity, and price efficiency. Second, the Commission believes that this timeframe is sufficiently large to capture seasonal effects, such as periodic ''rolls'', that may affect trading behavior in the security-based swap market. Finally, a sufficiently long timeframe increases the likelihood that Commission staff can separate potential market impacts resulting from the introduction of mandated post-trade transparency from short-term macroeconomic trends and shocks that also could affect market behavior.

While allowing time for data gathering and analysis by Commission staff that will inform the Commission about appropriate block thresholds and reporting delays, the interim approach to reporting and public dissemination may moderate the economic effects flowing from public dissemination of transaction data. By providing reporting sides up to 24 hours during the interim phase of Regulation SBSR in which to report their transactions, market observers will experience delays in obtaining information about market activity compared to an alternative policy of implementing a requirement for real-time reporting and public dissemination at the present time. For example, if there is a spike in activity or a significant price movement in a particular security-based swap product, market observers might not become aware of this until 24 hours afterwards. Larger dealers that observe more order flow and execute more transactions than other market participants would, during the interim phase, continue to enjoy an informational advantage over others who are not yet aware of recently executed transactions.

b. Programmatic Costs

While the Commission has considered whether there could be a reduction in the programmatic benefits of public dissemination associated with providing too much time before a security-based swap transaction must be reported and publicly disseminated, the Commission also has considered that 24 hours might be too little time for liquidity providers to manage inventory risk. If a liquidity provider who engages in a large trade, or in a trade in an illiquid security, cannot offset the risk within 24 hours, the costs for providing liquidity could rise, resulting in less liquidity provision (*i.e.,* less size provided at the desired price, or the same size provided at worse prices). This result might be avoided in a regulatory environment offering a longer delay between the time of execution of a security-based swap and the time that it must be reported and publicly disseminated.

4. Use of UICs

Rule 903(a) provides that, if an IRSS meeting certain criteria is recognized by the Commission and issues a UIC, that UIC must be used by all registered SDRs and their participants in carrying out duties under Regulation SBSR. Under Rule 903(a), if the Commission has recognized such an IRSS that assigns UICs to persons, each participant of a registered SDR shall obtain a UIC from or through that system. If no IRSS that can issue particular types of UICs has been recognized, the registered SDR is required to assign such UICs using its own methodology.

The following UICs are specifically required by Regulation SBSR: Counterparty ID, product ID, transaction ID, broker ID, branch ID, trading desk ID, trader ID, execution agent ID, platform ID, and ultimate parent ID. The security-based swap market data typically include fee-based codes, and all market participants and market observers must pay license fees and agree to various usage restrictions to obtain the information necessary to interpret the codes. Under Rule 903(b), a registered SDR may permit information to be reported pursuant to Rule 901, and may publicly disseminate that information pursuant to Rule 902, using codes in place of certain data elements only if the information necessary to interpret those codes is widely available to users of the information on a non-fee basis.

a. Programmatic Benefits

UICs will provide market participants that use a common registered SDR with a uniform way to refer to their counterparties and other persons or business units that might be involved in a transaction (such as brokers, trading desks, and individual traders). UICs are designed to allow registered SDRs, relevant authorities, and other users of data to quickly and reliably aggregate security-based swap transaction information by UIC along several dimensions (*e.g.,* by product, by individual trader, or by corporate group (*i.e.,* entities having the same ultimate parent)). The requirement for a registered SDR to refer to each person, unit of a person, product, or transaction with a single identifying code is designed to facilitate the performance of market analysis studies, surveillance activities, and systemic risk monitoring by relevant authorities through the streamlined presentation of security-based swap transaction data. These benefits apply on an SDR level, as each registered SDR is required to assign UICs using its own methodology if a relevant UIC is not available from an IRSS.

To the extent that multiple SDRs use the same UICs, these benefits would apply across SDRs. In particular, because the Commission has recognized the GLEIS—through which LEIs can be obtained—as an IRSS that meets the criteria of Rule 903, if an entity has an LEI issued by or through the GLEIS, then that LEI must be used for all purposes under Regulation SBSR. The Commission believes that this will facilitate aggregation by relevant authorities for surveillance and monitoring purposes. Nevertheless, the Commission acknowledges potential impediments to uniformity of UICs across registered SDRs. While registered SDRs are required to use an LEI issued by the GLEIS to identify a counterparty to a reported transaction, this requirement extends to only those counterparties that have been assigned an LEI by the GLEIS. Under Rule 903(a), these counterparties will include all SDR participants that are U.S. persons, including special entities and investment advisers, as well as all SDR participants that are registered security-based swap dealers and registered major security-based swap participants. Additionally, these counterparties will include non-U.S. subsidiaries of U.S. persons, when their performance under security-based swaps is guaranteed by a U.S. affiliate. For a person who is a counterparty to a security-based swap reported on a mandatory basis to a

registered SDR, who does not meet these conditions, and who has not obtained an LEI from the GLEIS, a registered SDR will be required to assign a UIC to that market participant using its own methodology. For such counterparties, this could result in the proliferation of multiple UIC assignments for the same entity to the extent that they are counterparties to security-based swaps that are reported across several SDRs that each assign a unique UIC.

This could pose challenges to the relevant authorities and other users of data to quickly and reliably aggregate security-based swap transaction information, and potentially impede the performance of market analysis studies and surveillance activities. In particular, mapping the unique identifiers across SDRs would entail a manual process of connecting like entities initially, and maintaining such a mapping over time to the extent that an entity's organizational structure changes in a way that requires a change to the UIC. This manual process could slow or introduce errors into the analysis of transaction activity or economic exposures of such counterparties. Requiring all participants and the entities to which they provide guarantees to utilize LEIs under Regulation SBSR should minimize these potential difficulties. Using the same LEI for these counterparties across all registered SDRs eliminates the need for such mapping.

Even absent uniformity of UICs, the use of such codes by a registered SDR and its participants could give rise to other significant potential benefits. The use of codes could improve the accuracy of the trade reporting system by streamlining the provision of data to the registered SDR. The product ID, for example, replaces several data elements that otherwise would have to be reported separately, thus enforcing the internal consistency of those data elements and reducing the likelihood of reporting errors.

In adopting Rule 903, the Commission has considered not only the benefits of using unique identification codes generally, but also the benefits of ensuring that such codes can be readily understood. Rule 903(b), as adopted, provides that a registered SDR may permit the use of codes in place of certain data elements for use in regulatory reporting and public dissemination of security-base swap transaction information only if the information necessary to interpret such codes is widely available to users of the information on a non-fee basis. This provision is intended to prevent any person who develops identification codes that might be used for the reporting or public dissemination of security-based swap transactions to charge fees or require other compensation from market participants, registered SDRs, other market infrastructure providers, and users of security-based swap data. Open access to UICs will promote the usage of public information about the security-based swap market, thereby furthering the statutory goals of Title VII. Rule 903(b) eliminates the possibility that market participants could be compelled to include fee-based codes in the transaction information that they are required to provide to a registered SDR, or that registered SDRs could be compelled to pay fees to code creators to be able to interpret the transaction information that is reported to them, or that market observers are compelled to pay fees to code creators to be able to interpret the security-based swap transaction information that is publicly disseminated. Rule 903(b) is designed to reduce barriers to entry into the security-based swap market [1288] by counterparties as well as service providers, because it minimizes the need for them to pay fees to code creators as a cost of entry.

b. Programmatic Costs

Rule 903 could also impose certain costs on current security-based swap market participants. Currently, private coding systems exist in the security-based swap market.[1289] To the extent that owners of these private coding systems do not make information to understand these codes widely available on a non-fee basis, Rule 903 would prohibit the use of such codes in the reporting or public dissemination of security-based swap transaction information carried out pursuant to Regulation SBSR. As a result of Rule 903, owners of these coding systems that otherwise might be used to report security-based swap transaction information will be restricted in their ability to profit from utilization of their codes for reporting under Regulation SBSR, although such codes could still be used for other purposes. To the extent that these owners currently generate revenue through fees charged to users of security-based swap data, Rule 903 could lower their revenues and cause them to increase revenues from other sources, including from those entities that wish to have identifiers assigned to them. Thus, Rule 903 may result in a reallocation of the costs associated with developing and maintaining UICs from users of data to producers of data.

Further, to the extent that market participants who currently utilized fee-based codes must reconfigure their systems and internal processes to use other codes (such as those issued by a registered SDR) that are compliant with Rule 903(b), the costs of such reconfiguration can be attributed to Rule 903(b). One commenter believed that reporting these UICs would require ''great cost and effort'' from firms, including the costs associated with establishing and maintaining UICs in the absence of a global standard.[1290] The Commission also acknowledges commenter concerns that there could be a certain degree of cost and effort associated with incorporating new UICs into firms' internal processes and record-keeping systems.[1291] However, the Commission believes that these costs are justified in the context of the programmatic benefits discussed in Section XXII(C)(4)(a), *supra,* such as the ability of relevant authorities to easily aggregate transaction reports on a variety of dimensions. The costs of developing such UICs are included in the discussion of the implementation of Rules 901 (detailing the data elements that must be reported [1292]) and 907 (detailing the requirement that SDRs develop policies and procedures for the reporting of the required data elements [1293]).

Any person who is a participant of a registered SDR must obtain an LEI from or through the GLEIS. Based on transaction data from DTCC–TIW, the Commission believes that no fewer than 3,500 of approximately 4,800 accounts that participated in the market for single-name CDS in 2013 currently have LEIs and are likely to maintain these LEIs in the absence of Regulation

[1288] The fees that a new entrant would have to pay for the use of fee-based codes are a cost that may deter a potential market participant from entering the security-based swap market. Currently, there is no mandated post-trade transparency and the security-based swap market is an OTC market and opaque, which is a barrier to enter for the market, as new entrants are at an informational disadvantage compared to established market participants, especially large dealers with significant order flow.

[1289] The Commission is aware of one such product identification system that involves six-digit reference entity identifiers and three-digit reference obligations identifiers as well as a standard three-digit maturity identifier.

[1290] *See* ISDA III at 2.

[1291] *See supra* Section XXII(C)(1)(c); Section XXII(E)(1)(a) (detailing the data elements that must be reported); Section XXII(C)(6)(d) (detailing the requirement that SDRs develop policies and procedures for the reporting of the required data elements). *See also* note 160, *supra.*

[1292] *See supra* Section XXII(C)(1).

[1293] *See supra* Section XXII(C)(6)(d).

SBSR.[1294] Therefore, the Commission believes that no more than approximately 1,300 DTCC–TIW accounts will have to obtain LEIs in order to comply with Rule 903(a). For these participants, the assignment of an LEI will result in one-time costs assessed by local operation units (''LOUs'') of the GLEIS associated with registering a new LEI. In addition to registration costs, LOUs assess an annual fee for LEI maintenance. The Commission assumes that no market participants that currently have LEIs would continue to maintain their LEIs in the absence of Rule 903(a) in order to arrive at an upper bound on the ongoing costs associated with Rule 903(a).

The prices for registering a new LEI and maintaining an existing LEI vary by LOU. Commission staff collected registration and maintenance charges for nearly all of the pre-LOUs currently endorsed by the interim GLEIS.[1295] Based on these charges, the Commission estimates a per-entity registration cost of between $84 and $220 and a per-entity maintenance cost of between $48 and $156.[1296]

The Commission is aware of two factors that may reduce these costs over time. First, the GLEIS operates on a cost-recovery model. If the marginal cost of an LEI is low, then an increase in the volume of LEIs will reduce the average cost of obtaining an LEI. These cost savings will be passed through to market participants in the form of lower prices. Second, the ability of market participants to port LEIs to the LOU of their choice will result in competitive pressure that may limit the prices that LOUs are able to charge for services. The governance system of the GLEIS is in place to help ensure that these economic factors will be operative.

The Commission expects that, in addition to the costs of obtaining an LEI from an LOU, each entity that registers a new LEI as a result of Rule 903(a) will incur start-up and ongoing administrative costs of no more than $334 per year.[1297] The Commission believes, therefore, that the upper bound on aggregate costs to market participants arising from the obligation to obtain an LEI lies between $500,000 and $700,000 in the first year and between $1,600,000 and $2,100,000 in subsequent years.[1298]

5. Cross-Border Aspects of Regulation SBSR

Rule 908(a)(1), as adopted, identifies the security-based swaps that will be subject to regulatory reporting and public dissemination. Rule 908(a)(2), as adopted, identifies the security-based swaps that will be subject to regulatory reporting but will not be publicly disseminated. Rule 908(b) provides that non-U.S. persons (except for non-U.S. persons that are registered security-based swap dealers or registered major security-based swap participants) have no duties under Regulation SBSR. Rule 908(c) provides that the Title VII requirements relating to regulatory reporting and public dissemination of security-based swaps may be satisfied by compliance with the rules of a foreign jurisdiction if the Commission determines that the jurisdiction has requirements that are comparable to those of Regulation SBSR.

As discussed further in Section XXII(D), the security-based swap market is a global market characterized by a high level of interconnectedness and significant information asymmetries. Because U.S. market participants and transactions regulated under Title VII are a subset of the overall global security-based swap market and the swap markets more generally, concerns surrounding risk and liquidity spillovers are part of the framework in which the Commission analyzes the effects of these rules. Additionally, relevant authorities in other jurisdictions are currently engaged in implementing their own regulatory reforms of the OTC derivatives markets. Because a large portion of security-based swap activity involves both U.S.-person and non-U.S. person counterparties, a key consideration in the Commission's analysis of the economic effects of these rules is the extent to which their application complements or conflicts with rules promulgated by foreign regulators.

a. Programmatic Benefits

Rule 908 provides that a transaction will be subject to regulatory reporting if there is a direct or indirect counterparty on either or both sides that is a U.S. person, a registered security-based swap dealer, or a registered major security-based swap participant, or if the transaction is submitted to a clearing agency having its principal place of business in the United States.

The Commission anticipates that regulatory data that it receives from registered SDRs will aid in its understanding of counterparty relationships in the global security-based swap market that are most likely to affect the U.S. financial markets. Such market data will allow the Commission to view, for example, large security-based swap exposures of U.S. persons, registered security-based swap dealers, registered major security-based swap participants, and U.S. clearing agencies that could have the potential to destabilize U.S. financial markets. Moreover, because registered security-based swap dealers and members of U.S. clearing agencies are likely to participate in other asset markets, regulatory reporting could help the Commission estimate the risk that a corporate event could impair the ability of these market participants to trade in other asset markets. An improved ability to measure such risks could help the Commission evaluate the ability of the Title VII regulatory regime to limit the risk of contagion between the security-based swap market and other asset markets.

A second key programmatic benefit of regulatory reporting is that it would aid the Commission in detecting and taking appropriate action against market abuse. With comprehensive data on transaction volumes and prices involving U.S. persons, the Commission could help ensure that all market participants are able to benefit from the risk-sharing afforded by the security-based swap market on fair terms.

Finally, security-based swap transaction data reported to registered SDRs would aid the Commission and other relevant authorities in enforcing other Title VII rules and deter noncompliance. For example, the Cross-Border Adopting Release set forth *de minimis* levels of activity and exposures above which market participants would have to either register as security-based swap dealers or as major security-based

[1294] *See supra* note 1109. Commission staff used counterparty information provided by Avox to match account numbers in the DTCC–TIW 2013 transactions data to their LEIs. Of 4,760 participating accounts, 3,533 had LEI information in their Avox counterparty record.

[1295] *See* ''Endorsed Pre-LOUs of the Interim Global Legal Entity Identifier System (GLEIS)'', January 2, 2015 (available at *http://www.leiroc.org/publications/gls/lou_20131003_2.pdf*).

[1296] Commission staff converted all foreign currency amounts to U.S. dollars and added taxes and surcharges where these amounts were available.

[1297] This estimate is based on one hour of a compliance attorney at $334 per hour and is based upon data from SIFMA's Management & Professional Earnings in the Securities Industry 2013 (modified by the SEC staff to account for an 1,800-hour-work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead).

[1298] The lower end of the range for costs in the first year is calculated as: [(LEI Registration) $84 + (Administration) $334] × 1,300 participants = $543,400. The upper end of the range for costs in the first year is calculated as: [(LEI Registration) $220 + (Administration) $334] × 1,300 participants = $720,200. The lower end of the range for costs in subsequent years is calculated as: [(LEI Maintenance) $48 + (Administration) $334] × 4,800 participants = $1,833,600. The upper end of the range for costs in subsequent years is calculated as: [(LEI Maintenance) $156 + (Administration) $334] × 4,800 participants = $2,352,000.

swap participants.[1299] Regulatory reporting could help deter participants that engage in high transaction volume with counterparties that are expected to have a significant portion of their financial and legal relationships exist within the United States from avoiding the obligation to register with the Commission when their activity surpasses these thresholds.

Rule 908(a)(2) determines the scope of transactions subject to public dissemination requirements. A security-based swap must be publicly disseminated if there is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction, or if the transaction is submitted to a clearing agency having its principal place of business in the United States. Certain of the programmatic benefits of public dissemination are similar to those of regulatory reporting. For instance, public dissemination of transaction prices will enable U.S. persons to compare a quote provided by a registered security-based swap dealer against recent transaction prices for security-based swaps referencing the same or similar underlying entities. In addition, market participants will be able to analyze whether the price they paid for credit protection is commensurate with prices revealed by transaction activity immediately following their transaction. In both of these cases, public dissemination enables market participants to evaluate the quality of the prices that dealers offer, providing registered security-based swap dealers with additional incentives to quote narrower spreads.

Rule 908(c) provides that the Title VII requirements relating to regulatory reporting and public dissemination of security-based swaps may be satisfied by compliance with the rules of a foreign jurisdiction if the Commission determines that the jurisdiction has requirements that are comparable to those of Regulation SBSR. In addition, to the extent that a market participant is able to take advantage of a substituted compliance determination made under Rule 908(c), the Commission does believe some cost reduction may be realized. If a market participant does not report to an SDR registered with the Commission, such market participant (whether it be a reporting side or not) would be able to avoid those costs detailed in this adopting release. A market participant evaluating whether or not to take advantage of substituted compliance would consider these potential cost reductions along with the costs it would incur in assessing the feasibility of substituted compliance and meeting any conditions attached to a substituted compliance determination by the Commission.[1300] While, the Commission is, at this time, unable to estimate the net savings—as no substituted compliance determinations have been made—the highest level of savings possible for a reporting side that avails itself of substituted compliance is the aggregate cost of regulatory reporting under the final rules.[1301]

b. Programmatic Costs

Rules 908(a)(1) and (2) require regulatory reporting of transactions that involve U.S. person counterparties, are submitted to U.S. clearing agencies, or that involve registered security-based swap dealers or registered major security-based swap participants.

Other jurisdictions are developing rules relating to post-trade transparency for security-based swaps at different paces. The Commission is mindful that, in the near term and until full implementation of post-trade transparency requirements in the other jurisdictions that are comparable to those in Regulation SBSR, Rule 908(a)(1) may intensify incentives for non-U.S. market participants to avoid contact with U.S. counterparties (whether acting directly or as guarantors of non-U.S. persons) in an effort to avoid the public dissemination requirements. This could result in reduced liquidity for U.S. market participants.[1302]

The Commission cannot readily quantify the costs that might result from reduced market access for U.S. persons or counterparties whose security-based swap activities benefit from recourse to U.S. persons because the Commission does not know what rules other jurisdictions may implement or the times at which they may implement their rules. However, while the Commission has not quantified these costs, it assessed them qualitatively and considered them in formulating the scope for requirements under the final rules.[1303]

As discussed in Section XXII(C)(5), *supra,* the Commission believes that most of the costs related to the cross-border application of Regulation SBSR are subsumed in the costs of Rules 901 and 902, with one exception. Specifically, requests for a substituted compliance determination would result in costs of preparing such requests. The Commission estimates the costs of submitting a request pursuant to Rule 908(c) would be approximately $110,000.[1304] The Commission further estimates that it will receive 10 requests in the first year and two requests each subsequent year, for a total cost in the first year of $1,100,000 and a total cost in each subsequent year of $220,000. Once such request is made, however, other market participants in the same jurisdiction that wish to rely on substituted compliance with respect to regulatory reporting and public dissemination would be able to rely on the Commission's substituted compliance determination. Accordingly, the assessment costs would only need to be incurred once with respect to the same area of a foreign regulatory system.

c. Assessment Costs

The Commission believes that the assessment costs associated with determining the status of counterparties and the location of transactions should be primarily one-time costs of establishing a practice or compliance procedure. As discussed in the Cross-Border Proposing Release,[1305] the

[1299] *See* Cross-Border Adopting Release, 79 FR 47301.

[1300] *See* Cross-Border Proposing Release, 78 FR 31202.

[1301] *See supra* Section XXII(C)(1) (discussing the quantifiable costs of regulatory reporting).

[1302] The efficiency implications for public dissemination of cross-border activity is discussed in Section XXII(D)(4)(b), *infra.*

[1303] *See* Cross-Border Adopting Release, 79 FR 47278–372 (discussing recourse guarantees).

[1304] This estimate is based on information indicating that the average costs associated with preparing and submitting an application to the Commission for an order for exemptive relief under Section 36 of the Exchange Act in accordance with the procedures set forth in Rule 0–12 under the Exchange Act, 17 CFR 240.0–12. A substituted compliance request contemplated by Rule 908(c) would be made under Rule 0–13 under the Exchange Act, which sets forth procedures similar to those used by the Commission in considering exemptive order applications under Section 36. The Commission estimates that preparation of a request would require approximately 80 hours of in-house counsel time and 200 hours of outside counsel time. Such estimate takes into account the time required to prepare supporting documents necessary for the Commission to make a substituted compliance determination, including, without limitation, information regarding applicable requirements established by the foreign financial regulatory authority or authorities, as well as the methods used by the foreign financial regulatory authority or authorities to monitor compliance with these rules. Based upon data from SIFMA's Management & Professional Earnings in the Securities Industry 2013 (modified by the SEC staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead), the Commission estimates that the average national hourly rate for an in-house attorney is $380. The Commission estimates the costs for outside legal services to be $400 per hour. Accordingly, the Commission estimates the total cost to submit a request for a substituted compliance determination to be approximately $110,000 ($30,400 (based on 80 hours of in-house counsel time × $380) + $80,000 (based on 200 hours of outside counsel time × $400)).

[1305] *See* Cross-Border Proposing Release, 78 FR 31202.

assessment costs associated with the substituted compliance would, in part, flow from the assessment of whether the counterparties to a security-based swap transaction satisfy the conditions of Rule 908(a). This assessment may be done by an in-house counsel reviewing readily ascertainable information. The Commission believes that the cost involved in making such assessment should not exceed one hour of in-house counsel's time or $380.[1306]

The Commission believes that market participants will likely incur costs arising from the need to identify and maintain records concerning the status of their counterparties and the location of any clearing agency used. The Commission anticipates that potential applicants for substituted compliance are likely to request representations from their transaction counterparties to determine the counterparties' status. The Commission believes that the assessment costs associated with determining the status of counterparties should be primarily one-time costs of establishing a practice or compliance procedure of requesting and collecting representations from trading counterparties and maintaining the representations collected as part of the recordkeeping procedures and limited ongoing costs associated with requesting and collecting representations.[1307] As discussed in the Cross-Border Proposing Release, the Commission believes that such one-time costs would be approximately $15,160.[1308] The Commission believes that requesting and collecting representations would be part of the standardized transaction process reflected in the policies and procedures regarding security-based swap sales and trading practices and should not result in separate assessment costs.[1309] To the extent that market participants have incurred costs relating to similar or same assessments for other Title VII requirements, their assessment costs with respect to substituted compliance may be less.

6. Other Programmatic Effects of Regulation SBSR

a. Operating Hours of Registered SDRs—Rule 904

Paragraphs (c) to (e) of Rule 904 specify requirements for receiving, handling, and disseminating reported data during a registered SDR's normal and special closing hours. The Commission believes that these provisions will provide benefits in that they clarify how security-based swaps executed while a registered SDR is in normal or special closing hours would be reported and disseminated. The Commission believes that the costs of requirements under these rules will be related to providing notice to participants of its normal and special closing hours and to provide notice to participants that the SDR is available to accept transaction data after its system is unavailable.

One commenter asserted that the proposed requirement for a registered SDR to receive and hold in the queue the data required to be reported during its closing hours ''exceeds the capabilities of currently-existing reporting infrastructures.'' [1310] However, the Commission notes that this comment was submitted in January 2011; since the receipt of this comment, swap data repositories that are provisionally registered with the CFTC that are likely also to register as SDRs with the Commission appear to have developed the capability of receiving and holding data in queue during their closing hours.[1311] Thus, the Commission continues to believe that requiring registered SDRs to hold data in queue during their closing hours would not create a significant burden for registered SDRs.

Rule 904, as adopted, requires a registered SDR to have systems in place to receive and disseminate information regarding security-based swap data on a near-continuous basis, except during ''normal closing hours'' and ''special closing hours.'' A registered SDR will be permitted to establish ''normal closing hours,'' which may occur only when, in the estimation of the registered SDR, the U.S. markets and other major markets are inactive. In addition, a registered SDR will be permitted to declare, on an *ad hoc* basis, special closing hours to perform routine system maintenance, subject to certain requirements. The re-proposal of Regulation SBSR in the Cross-Border Proposing Release only made minor technical changes to Rule 904.

The Commission continues to believe that a registered SDR will not incur significant costs in connection with Rule 904. The requirement for a registered SDR to provide reasonable advance notice to participants and to the public of its normal and special closing hours, and to provide notice to participants that the SDR is available to accept transaction data after its system was unavailable will likely entail only a modest annual cost. The Commission estimates that the ongoing aggregate annual cost would be $45,000, which corresponds to $4,500 per registered SDR.[1312]

The Commission does not believe there are significant one-time costs related to Rule 904. The Commission believes that, other than the costs related to the notice provisions cited above, any additional costs are subsumed in the costs associated with Rules 901 and 902. For example, the requirement for reporting sides to report information to the registered SDR upon receiving a notice that the registered SDR has resumed its normal operations would be part of the reporting sides' reporting obligations under Rule 901. The requirement to disseminate transaction reports held in queue should not present any costs in addition to those already contained in Rule 902. The Commission believes that the systems of the SDR would already have to account for system upgrades and maintenance, power outages, system overloads or other malfunctions or contingencies and as a result there would not be any additional quantifiable costs to also account for normal closing hours. Furthermore, to the extent that market participants have already expended resources in anticipation of the adoption of Regulation SBSR, the costs could be significantly lower. As a result, the Commission's estimates should be viewed as an upper bound of the potential costs of Regulation SBSR.

After reviewing comment letters received in response to the Regulation SBSR Proposing Release and the Cross-Border Proposing Release, the Commission continues to believe that these cost estimates pertaining to Rule 904, as adopted, remain valid. The Commission has received no comments to the contrary.

b. Error Reporting—Rule 905

Rule 905 requires any counterparty to a security-based swap that discovers an error in previously-reported information to take action to ensure that corrected information is provided to the registered SDR to which the initial transaction was reported. The rule also requires a registered SDR to verify any error reports that it receives and correct and, if necessary, publicly disseminate a corrected transaction report. This rule should enhance the overall reliability of security-based swap transaction data that must be maintained by registered

[1306] *See id.,* note 1954.

[1307] *See id.* at 31203.

[1308] *See id.*

[1309] *See id.,* note 1957.

[1310] Markit I at 4.

[1311] *See supra* note 668.

[1312] The Commission derived this number as follows: [(Operations Specialist (36 hours) at $125 per hour) × (10 registered SDRs)] = $45,000, which corresponds to $4,500 per registered SDR.

SDRs. For registered SDRs, the ability to verify disputed information, process a transaction report cancellation, accept a new security-based swap transaction report, and update relevant records are all capabilities that the registered SDR must implement to comply with its obligations under Regulation SBSR. Likewise, to comply with Rule 905, a registered SDR must disseminate a corrected transaction report in instances where the initial report included erroneous primary trade information. This will allow market observers to receive updated transaction information from the same source that publicly disseminated the original transaction and allow them to integrate updated transaction information into their understanding of the security-based swap market.

Requiring participants to promptly correct erroneous transaction information should help ensure that the Commission and other relevant authorities have an accurate view of risks in the security-based swap market. Correcting inaccurate security-based swap transaction data held by a registered SDR also could benefit market participants by helping them to accurately value the security-based swaps they carry on their books.

The Commission believes that the costs of requirements under these rules will be related to developing and publicly providing the necessary protocols for carrying out error correction and reporting.

Rule 905(a), as adopted, establishes procedures for correcting errors in reported and disseminated security-based swap information, recognizing that any system for transaction reporting must accommodate for the possibility that certain data elements may be incorrectly reported. Rule 905(b), as adopted, sets forth the duties of a registered SDR to verify disputed information and make necessary corrections. If the registered SDR either discovers an error in a transaction on its system or receives notice of an error from a counterparty, Rule 905(b)(1) requires the registered SDR to verify the accuracy of the terms of the security-based swap and, following such verification, promptly correct the erroneous information contained in its system. Rule 905(b)(2) will further require that, if the erroneous transaction information contained any data that fall into the categories enumerated in Rule 901(c) as information required to be reported, the registered SDR would be required to publicly disseminate a corrected transaction report of the security-based swap promptly following verification of the trade by the counterparties to the security-based swap.

The Commission continues to believe that promptly submitting an amended transaction report to the appropriate registered SDR after discovery of an error as required under Rule 905(a)(2) will impose costs on reporting sides. Likewise, the Commission continues to believes that promptly notifying the relevant reporting side after discovery of an error as required under Rule 905(a)(1) will impose costs on non-reporting-party participants.

With respect to reporting side, the Commission continues to believe that Rule 905(a) will impose an initial, one-time cost associated with designing and building the reporting entity's reporting system to be capable of submitting amended security-based swap transactions to a registered SDR. In addition, reporting sides will face ongoing costs associated with supporting and maintaining the error reporting function.[1313]

The Commission continues to believe that designing and building appropriate reporting system functionality to comply with Rule 905(a)(2) will be a component of, and represent an incremental ''add-on'' to, the cost to build a reporting system and develop a compliance function as required under Rule 901.

The Commission estimates this incremental burden to be equal to 5% of the one-time and annual costs associated with designing and building a reporting system that is in compliance with Rule 901,[1314] plus 10% of the corresponding one-time and annual costs associated with developing the reporting side's overall compliance program required under Rule 901.[1315] Thus, for reporting sides, the Commission estimates that Rule 905(a) will impose an initial (first-year) aggregate cost of $3,547,500, which is approximately $11,825 per reporting side,[1316] and an ongoing aggregate annual cost of $1,192,500, which is approximately $4,000 per reporting side.[1317]

With regard to participants who are not assigned the duty to report a particular transaction, the Commission believes that Rule 905(a) will impose an initial and ongoing cost associated with promptly notifying the relevant reporting side after discovery of an error as required under Rule 905(a)(1). The Commission estimates that such annual cost will be approximately $64,000,000, which corresponds to approximately $13,000 per participant.[1318] This figure is based on the Commission's estimates of (1) 4,800 participants; and (2) 1.14 transactions per day per participant.[1319]

Rule 905 also imposes duties on security-based swap counterparties and registered SDRs to correct errors in reported and disseminated information.

The costs associated with establishing these capabilities, including systems development, support, and maintenance, are largely addressed in the Commission's analysis of those rules.[1320] The Commission estimates that to develop and publicly provide the necessary protocols for carrying out these functions would impose on each registered SDR a cost of approximately $200,000.[1321] The Commission estimates that to review and update such protocols will impose an annual cost on each registered SDR of $400,000.[1322]

Accordingly, the Commission estimates that the initial aggregate

[1313] The Commission continues to believe that the actual submission of amended transaction reports required under Rule 905(a)(2) would not result in material, independent costs because this would be done electronically though the reporting system that the reporting party must develop and maintain to comply with Rule 901. The costs associated with such a reporting system are addressed in the Commission's analysis of Rule 901. *See supra* Section XXII(C)(1)(b).

[1314] *See* Regulation SBSR Proposing Release, 75 FR 75271–72.

[1315] *See id.*

[1316] This figure is calculated as follows: [(((($49,000 one-time reporting system development costs) × (0.05)) + (($2,500 annual maintenance of reporting system) × (0.05)) + (($54,000 one-time compliance program development) × (0.1)) + (($38,500 annual support of compliance program) × (0.1))) × (300 reporting sides)] = $3,547,500, or $11,825 per reporting side.

[1317] This figure is calculated as follows: [(((($2,500 annual maintenance of reporting system) × (0.05)) + ((38,500 annual support of compliance program) × (0.1))) × (300 reporting sides)] = $1,192,500, or approximately $4,000 per reporting side.

[1318] This figure is based on the following: [(1.14 error notifications per non-reporting-side participant per day) × (365 days/year) × (Compliance Clerk (0.5 hours/report) at $64 per hour) × (4,800 participants)] = $63,912,960, or approximately $64,000,000, which corresponds to approximately $13,000 per participant.

[1319] This figure is based on the following: [((2 million estimated annual security-based swap transactions)/(4,800 participants))/(365 days/year)] = 1.14 transactions per day.

[1320] *See* SDR Adopting Release, Sections VIII and IX.

[1321] This figure is based on the following: [(Sr. Programmer (80 hours) at $303 per hour) + (Compliance Manager (160 hours) at $283 per hour) + (Compliance Attorney (250 hours) at $334 per hour) + (Compliance Clerk (120 hours) at $64 per hour) + (Sr. Systems Analyst (80 hours) at $260 per hour) + (Director of Compliance (40 hours) at $446 per hour) = $199,340, or approximately $200,000 per registered SDR.

[1322] This figure is based on the following: [(Sr. Programmer (160 hours) at $303 per hour) + (Compliance Manager (320 hours) at $283 per hour) + (Compliance Attorney (500 hours) at $334 per hour) + (Compliance Clerk (240 hours) at $64 per hour) + (Sr. Systems Analyst (160 hours) at $260 per hour) + (Director of Compliance (80 hours) at $446 per hour)] = $398,680, or approximately $400,000 per registered SDR.

annual cost on registered SDRs under Rule 905, as adopted, will be approximately $6,000,000, which corresponds to approximately $600,000 for each registered SDR.[1323] The Commission further estimates that the ongoing aggregate annual cost on registered SDRs under Rule 905, as adopted, will be approximately $4,000,000, which corresponds to approximately $400,000 for each registered SDR.

c. Other Participants' Duties—Rule 906

Rule 906(a) requires a registered SDR to send a notice to security-based swap counterparties that are participants of that SDR about any UIC information missing from transaction reports. Rule 906(a) also obligates such participants to provide the missing UIC information to the registered SDR upon receipt of such notice. Rule 906(a) is designed to enable a registered SDR to obtain a complete record of the necessary information for each security-based swap transaction and thereby enable the Commission and other relevant authorities to obtain a comprehensive picture of security-based swap transactions, which will facilitate surveillance and supervision of the security-based swap markets. More complete security-based swap records may provide the Commission necessary information to investigate specific transactions and market participants.

Rule 906(b) is designed to enhance the Commission's ability to monitor and surveil the security-based swap markets by requiring each participant of a registered SDR to report the identity of its ultimate parent and any affiliates that also are participants of that registered SDR. Obtaining this ultimate parent and affiliate information will be helpful for understanding the risk exposures of not only individual participants, but also for related participants operating within a larger financial group. The Commission expects these costs of requiring participants to provide ultimate parent and affiliate information to registered SDRs will be modest and, in any event, believes that the costs of providing this information are justified. Having information on the ultimate parent and affiliate would enhance the ability of the Commission to monitor security-based swap exposures within ownership groups, allowing it to better assess the overall risk exposure of these groups. The Commission is also attempting to reduce these burdens by requiring participants to report the identity only of their ultimate parent(s) but not any intermediate parent(s). The Commission further notes that a participant is not required to provide any information about an affiliate, other than its counterparty ID.[1324] The participant is not required to provide any transaction or other information on the affiliate's behalf.

Rule 906(c) is designed to enhance the overall reliability security-based swap transaction data that is required to be reported to a registered SDR pursuant to Rule 901 by requiring registered security-based swap dealers and registered major security-based swap participants to establish, maintain, and enforce written policies and procedures addressing compliance with Regulation SBSR. Rule 901(a) should result in reliable reporting of security-based swap transaction data by requiring key participants to focus internal procedures on the reporting function. Reliable reporting would benefit counterparties, relevant authorities, and the market generally, by reducing the likelihood of errors in regulatory and publicly disseminated data. This could allow relevant authorities and the public to have confidence in the data and minimize the need to make corrections in the future.

The Commission believes that the costs of requirements under these rules will be related to developing the written policies and procedures necessary to satisfy Rule 901's reporting requirements. Once development is complete, SDRs will face ongoing costs associated with maintaining and enforcing these policies and procedures.

Rule 906(a) requires a registered SDR, once a day, to send a report to each participant identifying, for each security-based swap to which that participant is a counterparty, any security-based swap(s) for which the registered SDR lacks counterparty ID and (if applicable) broker ID, trading desk ID, and trader ID. Rule 906(a) requires a participant that receives such a report to provide the missing information to the registered SDR within 24 hours. Rule 906(b) requires participants to provide a registered SDR with information identifying the participant's affiliate(s) that are also participants of the registered SDR, as well as its ultimate parent(s). Additionally, under Rule 906(b), participants are required to promptly notify the registered SDR of any changes to the information previously provided. Rule 906(c) requires a participant that is a registered security-based swap dealer or registered major security-based swap participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any security-based swap transaction reporting obligations in a manner consistent with Regulation SBSR.

Rule 906(a) requires a participant that receives a daily report from a registered SDR to provide the missing UICs to the registered SDR within 24 hours. The Commission believes that Rule 906(a) will result in an initial and ongoing aggregate annual cost for all participants since even participants that are the reporting side for some transactions will be the non-reporting side for other transactions. The Commission estimates that Rule 906(a) will result in an initial and ongoing aggregate annual cost for participants of approximately $12,800,000, which corresponds to a cost of approximately $2,700 per participant.[1325] This figure was based on the Commission's preliminary estimates of (1) 4,800 participants and (2) 1.14 transactions per day per participant.[1326]

Rule 906(b) requires every participant to provide a registered SDR an initial parent/affiliate report, using ultimate parent IDs and counterparty IDs, and updating that information, as necessary. The Commission continues to believe that the cost for each participant to submit an initial or update report will be $32.[1327] The Commission estimates that each participant will submit two reports each year.[1328] In addition, the Commission estimates that there may be 4,800 security-based swap participants and that each one may connect to two registered SDRs. Accordingly, the Commission estimates that the initial and ongoing aggregate annual cost

[1323] This figure is based on the following: [($199,340 to develop protocols) + ($398,680 for annual support)) × (10 registered SDRs)] = $5,980,200, or approximately $6,000,000, which corresponds to approximately $600,000 per registered SDR.

[1324] The Commission does not believe that the change in Rule 906(b) from ''participant ID'' to ''counterparty ID'' will result in any change in the cost to participants. The information to be provided is similar in scope and will, in the Commission's estimation, better accomplish the objective of ensuring that a registered SDR can identify each counterparty to a security-based swap.

[1325] This figure is based on the following: [(1.14 missing information reports per participant per day) × (365 days/year) × (Compliance Clerk (0.1 hours) at $64 per hour) × (4,800 participants)] = $12,782,592, or approximately $12,800,000, which corresponds to approximately $2,700 per participant.

[1326] This figure is based on the following: [((2 million estimated annual security-based swap transactions)/(4,800 participants))/(365 days/year)] = 1.14 transactions per day. *See supra* Section XXI.

[1327] This figure is based on the following: [(Compliance Clerk (0.5 hours) at $64 per hour) × (1 report)] = $32.

[1328] During the first year, the Commission believes each participant would submit its initial report and one update report. In subsequent years, the Commission estimates that each participant would submit two update reports.

associated with Rule 906(b) will be $614,400, which corresponds to $128 per participant.[1329]

Rule 906(c) requires each participant of a registered SDR that is a registered security-based swap dealer or registered major security-based swap participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any security-based swap transaction reporting obligations in a manner consistent with Regulation SBSR.[1330] Rule 906(c) also requires the review and updating of such policies and procedures at least annually. The Commission continues to estimate that developing and implementing written policies and procedures as required under the Rule 906 could result in a one-time initial cost to each registered security-based swap dealer or registered major security-based swap participant of approximately $58,000.[1331] This figure includes the estimated cost to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing.[1332] In addition, the Commission estimates that the annual cost to maintain such policies and procedures, including a full review at least annually, as required under the adopted rule, will be approximately $34,000 for each registered security-based swap dealer or registered major security-based swap participant.[1333] This figure is based on an estimate of the cost to review existing policies and procedures, make any necessary updates, conduct ongoing training, maintain relevant systems and internal controls systems, and perform necessary testing.

Accordingly, the Commission estimates that the initial aggregate annual cost associated with Rule 906(c) would be approximately $5,060,000, which corresponds to $92,000 per covered participant.[1334] The Commission further estimates that the ongoing aggregate annual cost associated with Rule 906(c) will be approximately $1,870,000, which corresponds to $34,000 per covered participant.[1335]

Rule 906(a) requires a registered SDR, once a day, to send a report to each participant identifying, for each security-based swap to which that participant is a counterparty, the security-based swap(s) for which the registered SDR lacks counterparty ID and (if applicable) broker ID, branch ID, execution agent ID, trading desk ID, and trader ID. Under Rule 906(a), a participant that receives such a report will be required to provide the missing ID information to the registered SDR within 24 hours.

The Commission believes that each registered SDR would face a one-time, initial cost of approximately $33,000 to create a report template and develop the necessary systems and processes to produce a daily report required by Rule 906(a).[1336] The Commission further believes that there will be an ongoing annual cost for a registered SDR to generate and issue the daily reports, and to enter into its systems the ID information supplied by participants in response to the daily reports, of approximately $30,000.[1337]

The Commission continues to estimate that the initial aggregate annual cost for registered SDRs associated with Rule 906(a) would be approximately $630,000, which corresponds to $63,000 per registered SDR.[1338] The Commission estimates that the ongoing aggregate annual cost for registered SDRs associated with Rule 906(a) will be approximately $300,000, which corresponds to $30,000 per for registered SDR.

d. Registered SDR Policies and Procedures—Rule 907

Rule 907(a) requires a registered SDR to establish and maintain written policies and procedures with respect to the receipt, reporting, and dissemination of security-based swap transaction data pursuant to Regulation SBSR. Under Rules 907(a)(1) and (2), a registered SDR's policies and procedures must specify the data elements of a security-based swap that must be reported and the reporting format that must be used for submitting information. Under Rule 907(a)(3), the registered SDR's policies and procedures must specify procedures for reporting life cycle events and corrections to previously submitted information. Rule 907(a)(4) requires policies and procedures for flagging transactions having special characteristics. Rules 907(a)(5) requires policies and procedures for assigning UICs in a manner consistent with Rule 903. Rule 907(a)(6) requires policies and procedures for periodically obtaining from each of its participants the ultimate parent and affiliate information required to be submitted to the SDR by Rule 906(b).

By requiring SDRs to establish and maintain policies and procedures pursuant to Rule 907(a)(1), SDRs likely will have to consult with their participants in devising flexible and efficient methods of obtaining high quality transaction data from market participants. This rule allows SDRs to adjust their policies and procedures as market conventions and technologies change. For example, registered SDRs will have the flexibility to incorporate new reporting methodologies more quickly. In addition, Rule 907(a)(1) should reduce the likelihood that financial innovation that leads to a new security-based swap products will disrupt regulatory reporting and public dissemination of transaction information related to the new product.

At the same time, the Commission believes that there are benefits to enforcing minimum standards for reporting transaction information, standards that will be established as a result of the requirement that SDRs develop policies and procedures in accordance with Rule 907. As noted in

[1329] This figure is based on the following: [($32/report) × (2 reports/year/registered SDR connection) × (2 registered SDR connections/participant) × (4,800 participants)] = $614,400, which corresponds to $128 per participant.

[1330] As is explained in the Paperwork Reduction Act discussion, the Commission estimates that there will be approximately 50 registered security-based swap dealers and 5 registered major security-based swap participants for a total of 55 respondents. *See supra* Section XXII(C)(1)(b)(i).

[1331] The Commission derived its estimate from the following: [(Sr. Programmer (40 hours) at $303 per hour) + (Compliance Manager (40 hours) at $283 per hour) + (Compliance Attorney (40 hours) at $334 per hour) + (Compliance Clerk (40 hours) at $64 per hour) + (Sr. Systems Analyst (32 hours) at $260 per hour) + (Director of Compliance (24 hours) at $446 per hour)] = $58,384, or approximately $58,000 per covered participant.

[1332] *See* Cross-Border Proposing Release, 78 FR 30994, note 256.

[1333] The Commission derived its estimate from the following: [(Sr. Programmer (8 hours) at $303 per hour) + (Compliance Manager (24 hours) at $283 per hour) + (Compliance Attorney (24 hours) at $334 per hour) + (Compliance Clerk (24 hours) at $64 per hour) + (Sr. Systems Analyst (16 hours) at $260 per hour) + (Director of Compliance (24 hours) at $446 per hour)] = $33,632, or approximately $34,000 per covered participant.

[1334] The Commission derived its estimate from the following: [($58,000 + $34,000) × (55 covered participants)] = $5,060,000, or approximately $92,000 per covered participant.

[1335] The Commission derived its estimate from the following: [($34,000) × (55 covered participants)] = $1,870,000.

[1336] The Commission derived its estimate from the following: [(Senior Systems Analyst (40 hours) at $260 per hour) + (Sr. Programmer (40 hours) at $303 per hour) + (Compliance Manager (16 hours) at $283 per hour) + (Director of Compliance (8 hours) at $446 per hour) + (Compliance Attorney (8 hours) at $334)] = $33,288, or approximately $33,000 per registered SDR.

[1337] The Commission derived its estimate from the following: [(Senior Systems Analyst (24 hours) at $260 per hour) + (Sr. Programmer (24 hours) at $303 per hour) + (Compliance Clerk (260 hours) at $64 per hour)] = $30,152, or approximately $30,000 per registered SDR.

[1338] The Commission derived its estimate from the following: [($33,288 + $30,152) × (10 registered SDRs)] = $634,400, or approximately $630,000, which corresponds to $63,440, or approximately $63,000 per registered SDR.

Section XXII(B)(1)(a)(iii), the Commission anticipates that a small number of registered SDRs will serve the security-based swap market. These SDRs may enjoy market power relative to their participants, and we believe that imposing minimum standards on them is reasonable to mitigate the risk that imperfect competition leads to low quality data collection.

Further, the requirement in Rule 907(c) that a registered SDR make publicly available on its Web site the policies and procedures required by Regulation SBSR will allow the public to better understand and interpret the data publicly disseminated by SDRs. For example, under Rule 907(a)(4)(i), a registered SDR will have policies and procedures that identify the characteristics of a security-based swap that could, in the fair and reasonable estimation of the registered SDR, cause a person without knowledge of these characteristics to receive a distorted view of the market. Making publicly available a description of the flags that it requires will allow the public to interpret the flags they observe in publicly disseminated data. Rule 907(d) requires registered SDRs to review, and update as necessary, the policies and procedures required by Regulation SBSR at least annually, and indicate the date on which they were last reviewed.

Finally, Rule 907(e) requires a registered SDR to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to the registered SDR pursuant to Regulation SBSR and the registered SDR's policies and procedures established thereunder. Rule 907(e) will assist the Commission in examining for compliance with Regulation SBSR and in bringing enforcement or other administrative actions as necessary or appropriate. Required data submissions that are untimely, inaccurate, or incomplete could diminish the value of publicly disseminated reports that are designed to promote transparency and price discovery.

The Commission believes that the costs of requirements under Rule 907(a) are related to developing policies and procedures. Rules 907(c) and 907(d) require a registered SDR to update its policies and procedures as necessary and to post these policies and procedures on its Web site. Rule 907(e) requires a registered SDR to provide the Commission with information related to the timeliness, accuracy, and completeness of data reported to it pursuant to Regulation SBSR and the registered SDR's policies and procedures established thereunder.

Under Regulation SBSR, registered SDRs have the flexibility to determine the precise means through which they will accept reports of security-based swap transaction data. Rather than setting—by rule—a fixed schedule of data elements that must be reported as well as the specific reporting language or reporting protocols that must be used, Regulation SBSR instead requires registered SDRs to establish and maintain policies and procedures that detail these requirements. Persons seeking to register as SDRs may have ongoing discussions with their participants—both before and after registration—about the appropriate means of permitting reporting in a manner that captures all the elements required by Rule 901 while minimizing the administrative burden on reporting sides. Also, the data elements necessary to understand a trade could evolve over time as new contracts are developed, or that the most efficient means of reporting also could evolve as new technologies or reporting languages are devised. In light of these considerations, the Commission believes that registered SDRs and, to the extent that SDRs seek discussion with them, market participants will be in a better position to define the necessary reporting elements over time as the security-based swap market evolves.

As discussed above in Section IV, the Commission considered the alternative of requiring reporting parties to use a single reporting language or protocol in submitting data to registered SDRs, and three commenters encouraged the use of the FpML standard.[1339]

While specifying a single, acceptable standard would remove any ambiguity surrounding data formats that reporting parties could use for transaction reports, the Commission has chosen not to adopt such an approach, for three reasons. First, market participants may have preferences over the different open-source structured data formats available. By allowing registered SDRs to choose from among formats widely used by participants, the adopted approach allows SDRs to coordinate with their participants to select standards that allow reporting parties to efficiently carry out their obligations under Rule 901. Second, allowing SDRs flexibility in the formats they accept should help ensure that they can accommodate innovations in the security-based swap market that lead to changes in data elements that must be reported under Rule 901. Third, the Commission believes that, so long as registered SDRs can make security-based swap transaction data accessible to the Commission using a uniform format and taxonomy, it may not be necessary to require reporting sides to report transaction data to registered SDRs using a single format or taxonomy. This approach gives a registered SDR the opportunity to differentiate its services by offering reporting sides the ability to report using different formats and taxonomies, if the SDR can convert these transaction reports into the uniform format and taxonomy pursuant to which the Commission will require the SDR to make transaction data accessible to the Commission.

The Commission believes that ten registered SDRs will be subject to Rule 907, and that developing and implementing written policies and procedures as required under Rule 907, will result in an initial, one-time cost to each registered SDR of approximately $4,100,000.[1340] This figure includes the estimated cost to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, perform necessary testing, monitor participants, and compile data. In addition, the Commission believes that its estimate for maintaining such policies and procedures, including a full review at least annually; making its policies and procedures publicly available on its Web site; and providing the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to Regulation SBSR, and the registered SDR's policies and procedures is reasonable. As a result, the Commission believes its preliminary estimate of approximately $8,200,000 for each registered SDR is valid.[1341] This figure

[1339] *See* DTCC II at 16; ISDA I at 4; ISDA/SIFMA I at 8.

[1340] The Commission derived its estimate from the following: [(Sr. Programmer (1,667 hours) at $303 per hour) + (Compliance Manager (3,333 hours) at $283 per hour) + (Compliance Attorney (5,000 hours) at $334 per hour) + (Compliance Clerk (2,500 hours) at $64 per hour) + (Sr. Systems Analyst (1,667 hours) at $260 per hour) + (Director of Compliance (833 hours) at $446 per hour)] = $4,083,278, or approximately $4,100,000 per registered SDR. The Commission believes that potential SDRs that have similar policies and procedures in place may find that these costs would be lower, while potential SDRs that do not have similar policies and procedures in place may find that the potential costs would be higher.

[1341] The Commission derived its estimate from the following: [(Sr. Programmer (3,333 hours) at $303 per hour) + (Compliance Manager (6,667 hours) at $283 per hour) + (Compliance Attorney (10,000 hours) at $334 per hour) + Compliance Clerk (5,000 hours) at $64 per hour) + (Sr. Systems Analyst (3,333 hours) at $260 per hour) + (Director of Compliance (1,667 hours) at $446 per hour)] = $8,166,722, or approximately $8,200,000 per

Continued

is based on an estimate of the cost to review existing policies and procedures, make necessary updates, conduct ongoing training, maintain relevant systems and internal controls systems, perform necessary testing, monitor participants, and collect data.[1342] Accordingly, the Commission estimates that the initial annual cost associated with Rule 907 will be approximately $12,250,000 per registered SDR, which corresponds to an initial annual aggregate cost of approximately $122,500,000.[1343] The Commission estimates that the ongoing annual cost associated with Rule 907 will be approximately $8,200,000 per registered SDR, which corresponds to an ongoing annual aggregate cost of approximately $82,000,000.[1344] These figures are based, in part, on the Commission's experience with other rules that require entities to establish and maintain compliance with policies and procedures.[1345]

Finally, the Commission continues to believe that the Rule 907(e) requirement that a registered SDR must provide to the Commission, upon request, such information as the Commission determines necessary or appropriate for the Commission to perform the duties of the Commission, registered SDRs will incur costs. The Commission notes, however, that any such costs are already covered by rules governing SDRs adopted in the SDR Adopting Release and, thus, do not need to be separately considered here. Specifically, Rule 13n–5(b) requires a registered SDR to establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the SDR is complete and accurate, and also to ensure that the transaction data and positions that it maintains are complete and accurate.[1346] The Commission further believes that these capabilities will enable a registered SDR to provide the Commission information or reports as may be requested pursuant to Rule 907(e). The Commission believes that Rule 907(e) will not impose any costs on a registered SDR beyond those imposed by Rule 13n–5(b). Furthermore, to the extent that market participants have already expended resources in anticipation of the adoption of Regulation SBSR, the costs could be significantly lower. As a result, the Commission's estimates should be viewed as an upper bound of the potential costs of Regulation SBSR.

After reviewing comment letters received in response to the Regulation SBSR Proposing Release and the Cross-Border Proposing Release, as well as evaluating the most recent data available to the Commission, the Commission continues to believe that these cost estimates related to Rule 907, as adopted, remain valid.

e. SIP Registration by Registered SDRs—Rule 909

Rule 909 requires a registered SDR to register with the Commission as a SIP. SIP registration of a registered SDR will help ensure fair access to important security-based swap transaction data reported to and publicly disseminated by the registered SDR. Specifically, requiring a registered SDR to register with the Commission as a SIP will subject it to Section 11A(b)(5) of the Exchange Act,[1347] which provides that a registered SIP must notify the Commission whenever it prohibits or limits any person's access to its services. If the Commission finds that the person has been discriminated against unfairly, the Commission can require the SIP to provide access to that person.[1348] Section 11A(b)(6) of the Exchange Act [1349] also provides the Commission authority to take certain regulatory action as may be necessary or appropriate against a registered SIP.[1350] Potential users of security-based swap market data will benefit from the Commission having the additional authority over a registered SDR/SIP provided by Sections 11A(b)(5) and 11A(b)(6) to help ensure that these persons offer their security-based swap market data on terms that are fair and reasonable and not unreasonably discriminatory.

Because the Commission is adopting a revised Form SDR that incorporates certain requests for information derived from Form SIP and will not require submission of a separate Form SIP, all programmatic costs of completing Form SDR are included in the Commission's SDR Adopting Release.[1351] As proposed and re-proposed, Regulation SBSR would have required the use of a separate form, existing Form SIP, for this purpose. In response to comments, however, the Commission is adopting a revised Form SDR that incorporates certain requests for information derived from Form SIP, and will not require submission of a separate Form SIP. All programmatic costs of completing Form SDR are scored in the SDR Adopting Release.[1352] Therefore, final Rule 909 itself imposes no programmatic costs on registered SDRs.

7. Definitions—Rule 900

The Commission believes that Rule 900 will not entail any material costs to market participants. Rule 900 defines terms used in Regulation SBSR and does not, in itself, impose any obligations or duties. To the extent that the scope of a particular definition subjects a person to one or more provisions of Regulation SBSR, the costs and benefits of that rule are assessed (and, where feasible, calculated) in light of the scope of persons affected. With respect to the definition of ''U.S. person,'' the Commission believes that the Commission's Title VII rules would benefit from having the same terms throughout and could, therefore, reduce assessment costs for market participants that might be subject to these rules.

D. Effects on Efficiency, Competition, and Capital Formation

1. Introduction

Section 3(f) of the Exchange Act [1353] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, also to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation (''ECCF''). In addition, Section 23(a)(2) of the Exchange Act [1354] requires the Commission, when making rules under

registered SDR. The Commission believes that potential SDRs that have similar policies and procedures in place may find that these costs would be lower, while potential SDRs that do not have similar policies and procedures in place may find that the potential costs would be higher.

[1342] In the Regulation SBSR Proposing Release, the Commission also included ''calculate and publish block trade thresholds'' as one of the items in the list of items that an SDR would need to undertake on an ongoing basis with respect to its policies and procedures under Rule 907. *See* Regulation SBSR Proposing Release, 75 FR 75276–77. Although the Commission is not adopting Rule 907(b) at this time, the costs discussed herein pertain to all of the policies and procedures of a registered SDR. The Commission does not believe that not adopting Rule 907(b), which applies only to policies and procedures relating to block trades, would have had a measureable impact on the costs related to developing the policies and procedures of the registered SDR. As a result, the Commission believes that its cost estimate continues to be valid.

[1343] The Commission derived its estimate from the following: [((4,083,278) + ($8,166,722)) × (10 registered SDRs)] = $122,500,000, or approximately $123,000,000.

[1344] The Commission derived its estimate from the following: [($8,166,722) × (10 registered SDRs)] = $81,667,220, or approximately $82,000,000.

[1345] *See* Cross-Border Proposing Release, 78 FR 30994, note 256.

[1346] *See* SDR Adopting Release, Rules 13n–5(b)(1)(iii) and 13n–5(b)(3).

[1347] 15 U.S.C. 78k–1(b)(5).

[1348] *See* 15 U.S.C. 78k–1(b)(5)(B).

[1349] 15 U.S.C. 78k–1(b)(6).

[1350] *See supra* note 994.

[1351] *See* SDR Adopting Release, Section VIII(D)(1).

[1352] *See id.*

[1353] 15 U.S.C. 78c(f).

[1354] 15 U.S.C. 78w(a)(2).

the Exchange Act, to consider the impact of such rules on competition. Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Regulation SBSR's effects on efficiency, competition, and capital formation are often closely related to one another, and it is difficult to distinguish between the effects of the final rules on each of these elements. For example, elements of a security-based swap market structure that foster competition between liquidity suppliers may result in narrower spreads and higher trading volume, eventually resulting in greater price efficiency. Similarly, a security-based swap market that provides low-cost opportunities for firms to hedge commercial and financial risks as a result of low implicit transaction costs may encourage capital formation by allowing these firms to share risks with market participants that are better able to bear them, thereby reducing their need to engage in precautionary savings. However, as the last example indicates, the final rules' effects on capital formation often arise indirectly through their effects on efficiency and competition.

The following discussion of the effects of Regulation SBSR on efficiency, competition, and capital formation considers the regime that Regulation SBSR establishes for regulatory reporting and public dissemination as well as the particular means of implementation that the Commission has chosen, relative to alternative means of implementation considered. Because the various elements of these rules will affect the behavior of counterparties, infrastructure providers, and market participants in general, the Commission has considered the economic effects at each of these levels, including cases in which policy alternatives that may be privately efficient for individual actors, may nevertheless fail to be efficient for the overall market.

Regulation SBSR establishes a regime for regulatory reporting and public dissemination of security-based swap transaction data. Under the final rules, the Commission and other relevant authorities will have access to detailed information about security-based swap transaction activity and about the risk exposures of security-based swap counterparties to both reference entities and to each other. At the same time, the public will enjoy unprecedented access to pricing and volume data of security-based swap transactions. Post-trade transparency in the security-based swap market will reduce information asymmetries, thereby allowing even small counterparties to base their trading decisions on information about activity in the broader market, which they would not be able to observe without post-trade transparency. Moreover, public dissemination of security-based swap transactions could be used as an input to economic decisions in other markets (*e.g.,* the corporate equity or bond markets).

2. Regulatory Reporting

As a result of the final rules, the Commission and other relevant authorities will have access, through registered SDRs, to comprehensive information about the security-based swap market. This information should improve relevant authorities' ability to oversee the security-based swap market both for systemic risk purposes and to detect, deter, and address market abuse.

Regulatory access to security-based swap data will facilitate monitoring of risk exposures with implications for financial stability that market participants do not internalize. For example, Regulation SBSR will provide relevant authorities with visibility into the security-based swap positions of a participant's ultimate parent. Regulation SBSR also will allow relevant authorities to detect unusual activity at a very granular level, by trading desk or even individual trader. Similarly, by filtering exposures to single-name CDS via the product ID, relevant authorities will be able to better understand any potential risk to financial stability that could arise if a corporate default triggers CDS payouts between counterparties. Information about the activity and exposures of security-based swap market participants could allow the Commission or other relevant authorities to take actions that reduce the likelihood of disruption to the smooth functioning of financial markets or to reduce the magnitude of such disruptions when they do occur.[1355] If such disruptions also impair capital formation by reducing the ability or willingness of financial intermediaries or other market participants to borrow or lend, then market oversight that reduces financial instability may also facilitate capital formation.

The opacity of the security-based swap market can contribute to uncertainty during periods of financial crisis. In the absence of information about the outstanding obligations between counterparties to security-based swaps, financial market participants may face uncertainty over the extent to which large financial institutions are exposed to each other's credit risk. This environment may create incentives for financial market participants to reduce risk exposures and seek safer assets (such as cash or Treasury securities), which could lead to a significant reduction in investment in capital goods.[1356] Under a robust regime of regulatory reporting, the Commission and other relevant authorities will have greater means to identify the extent of the relevant exposures and the interrelatedness of risks in the security-based swap market, which could be particularly important in times of financial stress. Providing relevant authorities access to information about outstanding obligations that result from security-based swap activity could allow these authorities to assist in the event of counterparty default. This knowledge could reduce market participants' uncertainty in times of stress, if, for example, it suggests to them a more orderly wind-down of risk exposures of the defaulting counterparty. To the extent that reduced uncertainty results in more efficient risk-sharing it may reduce market participants' demand for safe assets, as described above, and hence may improve the environment for capital formation.

Regulatory reporting will also enable the Commission and other relevant authorities to improve their monitoring of market practices. This could have direct effects on competition in the security-based swap market. Absent regulation by the Commission and other relevant authorities, potential market participants may consider the potential costs of market abuse to be a barrier that discourages their entry into the security-based swap market. The knowledge that the Commission and other relevant authorities are able to conduct surveillance on the basis of regulatory reporting may lower their barriers to entry since surveillance and the resulting increased probability of detection may deter potential market abuse in the security-based swap market. This could result in broader participation and improved efficiency, competition, and capital formation due to the availability of more risk-sharing opportunities between market participants.

[1355] *See supra* Section XXII(B)(1)(d) (describing current state of efficiency in the security-based swap market).

[1356] If financial market participants invest their money in cash or Treasury securities, rather than riskier assets such as stocks or corporate bonds, this may make it more difficult for companies to raise capital and invest in capital goods.

3. Public Dissemination

Regulation SBSR establishes a requirement for public dissemination of security-based swap transaction information. Currently, public access to security-based swap transaction information is limited to aggregate pricing and volume data made available by clearing agencies and DTCC–TIW, as well as infrequent reporting by large multilateral organizations. There is no comprehensive or widely available source of transaction-by-transaction pricing and volume information.

The Commission believes that public availability of pricing and volume data for individual security-based swaps, as required by Title VII, should promote efficiency and competition by enabling information produced by activity in the security-based swap markets to be used as an input to myriad economic decisions, when currently limited transaction information is generally available only to large dealers who observe customer order flow.[1357] Thus, smaller market participants, being able to view all security-based swap transactions disseminated by registered SDRs, can observe from recently executed prices whether there may be profitable opportunities to enter the market, thereby increasing competition. In addition, a firm may use information about the pricing of CDS written on its debt to decide on the appropriate opportunity cost of capital to apply to the cash flows of new investment projects, thereby promoting efficiency. Similarly, a lender may use information about credit risk embedded in the pricing of CDS written on a borrower's existing debt to inform the lender's decision of whether or not to extend additional financing, thereby also promoting efficiency.

As discussed in Section XXII(C)(2)(a), public dissemination of security-based swap transactions also may promote better valuation of underlying and related assets by allowing for the inclusion of last-sale information into valuation models. Models without the input of last-sale information could be imprecise or be based on assumptions subject to the evaluator's discretion without having last-sale information to help identify or correct flawed assumptions. As a result, otherwise identical market participants holding the same asset but using different valuation models might arrive at significantly different valuations. This could result in these market participants developing very different views of their risk exposures, resulting in inefficient economic decisions. The Commission anticipates that market observers will incorporate last-sale information that is publicly disseminated by registered SDRs into their valuation models for the same and related assets. Such last-sale information will assist them in developing and validating their pricing models and improve the accuracy of the valuations that they use for a variety of purposes, such as making new investment decisions or managing the risk of existing positions. Efficient allocation of capital relies on accurate valuation of asset prices. Overvaluation of assets could result in a misallocation of capital, as investors seek to purchase or hold an asset that cannot deliver the anticipated risk-adjusted return. By the same token, undervalued assets represent investment opportunities that might go unpursued, because investors do not realize that a more attractive risk-adjusted return may be available. To the extent that post-trade transparency enables asset valuations to move closer to their fundamental values, capital should be more efficiently allocated.

Information revealed through public dissemination of security-based swap transaction details takes on two key characteristics. First, use of a piece of information by one economic agent does not necessarily preclude use of the same information by another. Second, once information is made public under Regulation SBSR, it is, by definition, non-excludable. Dissemination cannot be limited only to those that have direct access to the information (such as dealers who observe significant order flow) or to larger market participants who are willing to pay for the information. These characteristics make it difficult for parties who report transaction data to capture the value that market participants and market observers may gain from receipt of publicly disseminated security-based swap data. As a result, public dissemination of security-based swap transaction information is prone to inefficient supply—for example, parties have an incentive to make incomplete reports of their activity. By establishing minimum requirements for what is reported and publicly disseminated, the Commission believes that Regulation SBSR will limit the degree of this inefficient supply.

Public dissemination will also likely affect efficiency and competition within the security-based market. A primary economic effect of the final rules on public dissemination of transaction information is to reduce the degree of information asymmetry between market participants. Information asymmetries are currently endemic in the security-based swap market. Large dealers can observe a significant amount of order flow provided by their customers and know the prices at which their various customers have traded with them. Other market participants, including the customers of large dealers, generally do not know the prices that other market participants have paid or would be willing to pay for particular security-based swaps, what products are being transacted, or in what volumes. Large dealers collectively, who are able to observe their customers' orders and executions, may be able use this information to adjust the prices that they quote to extract profits at the expense of their customers.[1358] Customers, with very limited ability to obtain information about the prices or sizes of others' transactions, are in an inferior bargaining position to the dealers that they face. To the extent that dealer private information counters the incentives for market participants to efficiently share risks using security-based swaps, it represents a dead-weight loss and not a simple reallocation of gains from trade between dealers and their customers.[1359] Post-trade transparency increases the bargaining power of customers because knowledge of last-sale prices in the same or similar instruments allows them to establish a baseline for negotiations with any dealer.

Post-trade transparency in other financial markets has been shown to improve competition and efficiency by decreasing implicit transaction costs and improving the bargaining power of investors and other non-dealers. For example, a number of studies of the corporate bond market have found that post-trade transparency, resulting from the introduction of FINRA's TRACE system, reduced implicit transaction costs.[1360] Reduced implicit transaction costs could encourage market entry, particularly of smaller dealers and non-dealers, and potentially increase risk sharing and price competition, thereby promoting efficiency. To the extent that the current security-based swap market

[1357] *See supra* Section XXII(B)(1)(d) (discussing sources of security-based swap information and efficiency in the current security-based swap market).

[1358] *See, e.g.,* Bessembinder *et al., supra* note 1259.

[1359] A dead-weight loss means that the economy in aggregate is worse off. If market participants do not share risks efficiently as a result of their inferior bargaining position relative to dealers, then risks are not transferred to those market participants who are in the best position to bear them. A dead-weight loss results when the benefits that accrue to dealers as a result of their private information are less than the costs of inefficient risk sharing, or when dealers do not benefit at the equal expense of other market participants.

[1360] *See* Edwards, *et al., supra* note 1223.

is similar to the corporate bond market prior to the introduction of TRACE, post-trade transparency could have similar effects in the security-based swap market.[1361]

Regulation SBSR will permit all market observers for the first time to see last-sale information of security-based swap transactions, thereby reducing the information asymmetry between dealers and non-dealers.[1362] Non-dealers may be able to use publicly disseminated information to negotiate more favorable prices from dealers or to decline to enter into security-based swaps offered at unfavorable prices, thereby improving the efficiency of risk sharing in the security-based swap market. Additionally, public dissemination could assist dealers in deriving better quotations, as knowledge of the prices and volumes at which other market participants have executed transactions could serve as a valuable input for quotations in the same or similar instruments.[1363] As a result, dealers will have a better sense of the market and may not need to build large margins into their quotations to compensate for uncertainty in providing quotations. Increased competition from new entrants and quotations that more accurately reflect fundamental value could lead to lower implicit transaction costs for security-based swaps, which will encourage efficient risk sharing and promote price efficiency.[1364]

The Commission recognizes, however, that the final rules will not eliminate entirely the informational advantage of large intermediaries. These market participants will still have the advantage of seeing order flows or inquiries that are not ultimately executed and disseminated. They also will be able to see their completed transactions against customers in real time, while market observers who consume the transaction data that is publicly disseminated by registered SDRs might not—during the interim phase of Regulation SBSR—learn of these transactions until up to 24 hours after they are executed. In addition, an executing intermediary may derive an informational advantage from knowing the identities of both its counterparties and other customers who submit orders or make inquiries about liquidity.

The Commission also acknowledges that implementing post-trade transparency in the security-based swap market could cause some market participants to execute fewer security-based swaps in the U.S. market or to exit the U.S. market completely and execute their transactions in foreign markets instead. To the extent that such events occur, these could be viewed as costs of the final rules that could have a detrimental impact on efficiency, competition, and capital formation. For example, certain market participants that are currently active in the market might not find it desirable for information about their security-based swaps to be publicly known. If market participants respond to the final rules by reducing their trading activity or exiting the market, or if the final rules raise barriers to entry, the result could be reduced competition between the remaining market participants. Besides reduced price competition, exit by certain participants from the market also could result in a less efficient allocation of credit risk. This could have implications for capital formation if market participants engage in precautionary savings and self-insurance rather than hedging their risks by using capital resources offered by third parties through security-based swaps.[1365]

Public dissemination of security-based swap transactions also may promote efficient valuation of various financial instruments. As a result of the final rules, all market participants and market observers will have the benefit of knowing how counterparties to a particular security-based swap valued the security-based swap at a specific moment in the recent past, and can incorporate this last-sale information into their own valuations for that security-based swap, as well as any related or underlying instrument.[1366] To the extent that last-sale information results in valuations that are more informationally efficient, they may help improve financial stability by making risk management by financial institutions more efficient. This in turn could enhance the ability of market participants to accurately measure financial exposures to each of their counterparties.

Public dissemination of security-based swap transaction information could improve the efficiency of the security-based swap market through more efficient deployment of assets used as collateral for security-based swap transactions. Appropriate collateral allocation is dependent on accurate valuation of security-based swaps. As the value of a security-based swap changes, the likelihood of one party having to make a payout to the other party also changes, which could impact the amount of collateral that one counterparty owes to the other. Hence, misvaluation of a security-based swap contract could lead to inefficient allocation of collateral across counterparties. To the extent that public dissemination of security-based swap transactions will help enable better valuations, instances of overcollateralization or undercollateralization should decrease. Furthermore, the better investors can judge the performance of collective investment vehicles because of better valuations, the more efficiently they can allocate their investment capital among available funds.

Post-trade transparency of security-based swaps should promote more efficient valuation of securities on which security-based swaps are based. A clear example of this is the market for single-name CDS, where post-trade transparency may lead to better estimates of the creditworthiness of debt issuers. All other things being equal, CDS protection on a more creditworthy issuer costs less than CDS protection on a less creditworthy issuer. Furthermore, the cost of CDS protection on a single issuer may change over time, reflecting, in part, the financial position of the issuer. Mandatory post-trade transparency of CDS transactions will offer market participants and market observers the ability to dynamically assess the market's view of the creditworthiness of the reference entities that underlie CDS contracts, thus promoting efficiency in the market for cash bonds. For example, public dissemination of transactions in CDS on reference entities that issue TRACE-eligible debt securities will help reinforce the pricing signals derived from individual transactions in debt securities generated by TRACE. Market participants can arbitrage disparities in prices reflected in TRACE and as suggested in last-sale information of related CDS, helping create more overall efficiency in the market for credit. Similarly, public dissemination of transactions in single-name CDS should

[1361] In the Regulation SBSR Proposing Release, the Commission requested comment on whether post-trade transparency would have a similar effect on the security-based swap market as it has in other securities markets—and if not, why not. *See* 75 FR 75226. No commenters responded to the Commission's request.

[1362] A similar information asymmetry, but to a lesser and varying degree, exists between larger and smaller dealers, and it would also be reduced.

[1363] *See supra* Section XXII(B)(2)(a) (discussing the benefits of improved valuation).

[1364] *See* Edwards, *et al., supra* note 1223.

[1365] The Commission notes there are also plausible cases in which Regulation SBSR might increase the efficiency of risk allocation while also reducing transaction volume. Market participants might determine, as a result of observing publicly disseminated price and volume data, that engaging in a security-based swap transaction is an inefficient means of managing financial or commercial risks.

[1366] *See supra* Section XXII(C)(2).

reinforce the pricing signals derived from public dissemination of index CDS transactions. Post-trade transparency of security-based swap CDS under Regulation SBSR could indirectly bring greater transparency into the market for debt instruments (such as sovereign debt securities) that are not subject to mandatory public dissemination through TRACE or any other means.

Finally, business owners and managers can use information gleaned from the publicly disseminated security-based swap transaction data to make more-informed investment decisions in physical assets and capital goods, as opposed to investment in financial assets, thereby promoting efficient resource allocation and capital formation in the real economy. Transparent security-based swap prices may also make it easier for firms to obtain new financing for business opportunities, by providing information and reducing uncertainty about the value and profitability of a firm's investments.[1367]

4. Implementation of Regulatory Reporting and Public Dissemination

a. Role of Registered SDRs

In adopting Regulation SBSR, the Commission has attempted to design the duties of registered SDRs to promote efficiency of the reporting and public dissemination requirements and thereby minimize any adverse impacts on competition and capital formation. At the same time, the Commission acknowledges that, to the extent that the final rules place regulatory obligations on registered SDRs, these obligations may constitute a barrier to entry that, at the margin, reduces competition between registered SDRs. Regulation SBSR requires a registered SDR to publicly disseminate specified information about reported security-based swap transactions immediately upon receipt. The Commission believes that this requirement will help promote an efficient allocation of public dissemination responsibilities for a number of reasons. First, registered SDRs—because of their role in the regulatory reporting function—already possess all of the information necessary to carry out public dissemination and would not have to collect additional information from other parties. Second, placing the duty to publicly disseminate on registered SDRs eliminates the need for the development of other infrastructure and mechanisms for public dissemination of security-base swap transaction information in addition to the infrastructure that is required to support regulatory reporting.[1368] Third, users of publicly disseminated security-based swap data will be required to consolidate transaction data from only a small number of registered SDRs, rather than a potentially larger number of dissemination agents that might exist under an alternative regime. Under Rules 907(a)(1) and 907(a)(2), registered SDRs have the flexibility to determine the precise means through which they will accept reports of security-based swap transaction data. This degree of flexibility has implications for the efficiency of data collection. Registered SDRs could choose to innovate and adopt new reporting formats that could lower costs to market participants while maintaining the required level of information and data integrity. Moreover, in an effort to attract business, registered SDRs could decide to accept data from market participants in a wide variety of formats, taking on additional data management and systems burdens. Indeed, such an outcome could represent an efficient allocation of the costs of data management, in which a handful of registered SDRs invest in technologies to transform data rather than approximately 300 reporting sides making similar changes to their systems in an effort to provide identical reports to each SDR. The Commission acknowledges, however, that the same features that support a market structure that yields only a handful of registered SDRs could temper the incentives of these registered SDRs to compete on reporting efficiency. For example, registered SDRs could decide to accept data from customers in only one specific format. The Commission further anticipates efficiency gains if data elements necessary to understand a trade evolve over time as new security-based swap contracts are developed. Additionally, this approach may support competition among security-based swap counterparties by maintaining low barriers to entry with respect to reporting obligations under Regulation SBSR.

Further, the final rules do not presume a market structure for registered SDRs. On one hand, this means that market participants, the Commission, and other relevant authorities cannot rely on efficiency gains from receiving security-based swap transaction data from a single, consolidated source, but must instead consolidate fragmented data from multiple SDRs. On the other hand, a monopoly in the market for SDR services could preclude innovations that may lead to higher quality outputs or lower costs for reporting parties, SDR participants more generally, the Commission, and other relevant authorities.

b. Interim Phase of Reporting Requirements and Block Rules

As discussed above in Section VII, the Commission is adopting rules for regulatory reporting and public dissemination of security-based swaps that are intended only as the interim phase of implementation of these Title VII requirements. At a later date, the Commission anticipates seeking additional comment on potential block thresholds and associated block rules (such as the time delay for disseminating block trades and the time period for the mandatory reporting and public dissemination of non-block trades).

Immediately implementing a complete regime that includes block trade thresholds and final reporting timeframes could improve efficiency, competition, and capital formation by increasing price transparency in the security-based swap market sooner. Several commenters, however, argued that requiring post-trade transparency for security-based swaps with incorrectly designed block trade thresholds could significantly damage the market,[1369] and the Commission is concerned that disruptions to the market that could result from establishing block trading rules without the benefit of comprehensive data analysis could cause certain market participants to limit their security-based swap activity or to withdraw from the market entirely. This in turn could lead to reduced competition, higher prices, and inefficient allocations of risk and capital.

Currently, there are no data that can be used to directly assess the impact of mandated post-trade transparency of security-based swap transactions on market behavior, because there is no widely available post-trade data to which the security-based swap market can react.[1370] The Commission anticipates that the initial phase of Regulation SBSR will yield at least some useful data about how much time market participants believe they need to hedge transactions and how other

[1367] *See* Bond, *et al.,* note 1258, *supra.*

[1368] *See supra* Section XXII(C)(2)(c).

[1369] *See supra* note 486.

[1370] The Commission's economic analysis of the effects of post-trade transparency on the security-based swap market has included indirect evidence from the swap market and from the security-based swap market. *See* Analysis of Post-Trade Transparency; Hedging Analysis.

market participants react when they see transactions of different sizes with different delays after the time of execution. The phased approach is designed to introduce mandatory post-trade transparency in the security-based swap market while allowing the Commission sufficient time to gather and analyze data regarding potential block thresholds and dissemination delays.

The Commission acknowledges that allowing up to 24 hours for reporting a security-based swap means that market participants not involved in that particular transaction, and other market observers, will not have access to information about the transactions for up to 24 hours after the initial execution, depending upon the specific time when the transaction is reported. This delay could impact the development of more vigorous price competition in the security-based swap market because market participants who are involved in transactions would have access to potentially market-moving information up to 24 hours before those who are not. The Commission believes, however, that allowing up to 24 hours for transactions to be reported and publicly disseminated still represents a significant improvement over the status quo, where market participants report transactions to data repositories only on a voluntary basis and information about transaction is not publicly disseminated.

c. Use of UICs and Rule 903

Regulation SBSR requires the use of several UICs in the reporting of security-based swap transactions. Use of UICs improves efficiency of data intake by registered SDRs and data analysis by relevant authorities and other users of data, as the reported security-based swap transaction information can be readily aggregated by UIC along several dimensions (*e.g.,* product ID, trading desk ID, or trader ID). The efficiency gain in aggregation applies primarily at the SDR level in cases where the SDR uses its own UICs that are not otherwise applied at other SDRs (assuming that no IRSS exists to provide such UICs). To the extent that multiple SDRs were to use the same UICs—because they use UICs provided by an IRSS, such as the GLEIS, or because SDRs agree to recognize UICs assigned by another SDR [1371]—the efficiency gain would extend to aggregation across SDRs, although this is not required under Regulation SBSR. The efficiency gains described in this section may be limited to regulatory reporting and only extend to public dissemination to the extent that the relevant information is being publicly disseminated. Additionally, minimizing the operational risks arising from inconsistent identification of persons, units of persons, products, or transactions by counterparties and market infrastructure providers would enhance efficiency.

Under Rule 903(b), as adopted, a registered SDR may permit information to be reported to it, and may publicly disseminate information, using codes in place of certain data elements only if the information necessary to interpret such codes is widely available to users of the information on a non-fee basis. If information to understand embedded codes is not widely available on a non-fee basis, information asymmetries would likely continue to exist between large market participants who pay for the codes and other market participants. Rents paid for the use of codes could decrease transparency and increase barriers to entry to the security-based swap market, because the cost of necessary licenses may reduce the incentives for smaller potential market participants to enter the market. Preventing this barrier to entry from forming should help promote competition by facilitating the entry of new market participants.

One commenter suggested that alternatives could be developed to the status quo of using fee-based codes in security-based swap market data.[1372] The Commission welcomes the development of such alternatives, and believes that Rule 903(b), as adopted, may encourage such development.

d. Rules Assigning the Duty To Report

Rule 901(a) assigns the reporting obligation for security-based swaps other than clearing transactions and platform-executed transactions that are submitted to clearing. The reporting hierarchy in Rule 901(a) is designed to increase efficiency for market participants, as well as the Commission and other relevant authorities, by locating the duty to report with counterparties who are most likely to have the resources and who are best able to support the reporting function. Furthermore, Rule 901(a) seeks to increase efficiency by leveraging existing infrastructure to support security-based swap reporting, where practicable.

The Commission anticipates that the majority of security-based swaps covered by Rule 901(a), as adopted, will include a registered security-based swap dealer or registered major security-based swap participant on at least one side. Many of the entities that are likely to register as security-based swap dealers or major security-based swap participants already have committed time and resources building the infrastructure to support reporting security-based swaps and some reporting to DTCC–TIW is occurring on a voluntary basis.[1373] Moreover, many such entities currently report swaps pursuant to the CFTC's swap data reporting rules. Rule 901(a) is designed, as much as practicable, to allow these market participants to use these existing reporting capabilities and to minimize the chance that a market participant with limited involvement in the security-based swaps market might incur the duty to report. This approach could lead to lower barriers to entry into the market compared to the approach contemplated in the SBSR Proposing Release.[1374] Also, by reducing infrastructure costs imposed on smaller market participants, this approach also could promote competition by reducing the likelihood that these smaller entrants without existing reporting capabilities would be required to incur fixed costs necessary to develop reporting capabilities. Finally, to the extent that non-registered persons are not required to devote resources to support transaction reporting—because reporting is carried out instead by registered security-based swap dealers and registered major security-based swap participants who, due to economies of scale and the presence of existing reporting capabilities, are likely to face relatively lower costs of reporting—such resources could be put to more efficient uses.[1375]

The Commission recognizes that this approach puts smaller market participants on the same rung of the hierarchy with entities that likely meet

[1371] For example, assume that a person becomes a participant of a registered SDR and obtains UICs for its trading desks and individual traders from that SDR. Later, that person becomes a participant at a second registered SDR. The second SDR could issue its own set of UICs for this person's trading desks and individual traders, or it could recognize and permit use of the same UICs that had been assigned by the first registered SDR.

[1372] *See* Bloomberg Letter at 2 (stating that it would be possible to develop a public domain symbology for security-based swap reference entities that relied on products in the public domain to ''provide an unchanging, unique, global and inexpensive identifier'').

[1373] As discussed in Section XXII(B)(1), *supra,* the data in DTCC–TIW are self-reported and the vast majority of trades involves at least one dealer as a counterparty. Further, both transaction counterparties submit records for confirmation, covering all likely registrants.

[1374] *See* Cross-Border Proposing Release, 78 FR 31194.

[1375] *See supra* Section XXII(C) (discussing the costs that reporting sides are likely to incur).

the definition of ''security-based swap dealer'' and will have to register with the Commission as such in the future. In theory, this could force these smaller market participants into a negotiation with the ''likely dealers,'' because Rule 901(a)(2)(ii)(E)(1) requires both sides to select the reporting side. The Commission believes that this outcome will be unlikely in practice. The Commission understands that voluntary reporting practices in the security-based swap market are broadly consistent with the principle behind the reporting hierarchy in Rule 901(a)(2)(ii): That the more sophisticated market participant should report the transaction. Moreover, market participants who are active in the security-based swap market are likely also to be active in the swap market, where CFTC rules have established a reporting hierarchy that assigns the heaviest reporting duties to swap dealers and major swap participants.[1376] Because practices have already been established for larger market participants to assume reporting duties, it is likely that these practices will be applied in the security-based swap market even before the Commission adopts registration rules for security-based swap dealers and major security-based swap participants.

One of the general principles underlying Rule 901(a) is that, if a person has the duty to report information under Regulation SBSR, it should also have the ability to choose the registered SDR to which it reports. The Commission believes that this approach will promote efficiency and competition, because it enables each person with a duty to report a security-based swap to connect and report transactions to the registered SDR (or SDRs) that offer it the highest quality services and/or the lowest fees to the extent that there is more than one SDR. Two commenters believed that the Commission could promote competition by allowing a counterparty to a security-based swap—typically a security-based swap dealer—to choose the registered SDR that receives information reported under Regulation SBSR.[1377] The Commission agrees with the views of the commenters that allowing a counterparty to choose the registered SDR that received information reported under Regulation SBSR could promote competition. Rule 901(a), as adopted, reflects this approach by allowing the person with the duty to report to choose the registered SDR to which it reports.

Finally, the Commission believes that, if Rule 901(a) affects capital formation at all, it would be in only a limited and indirect way. The Commission does not see—and no commenter has presented any evidence to suggest—that the economic considerations of how, where, and by whom security-based swap transactions will be reported to registered SDRs will have any direct bearing on how, how often, and at what prices market participants might be willing to transact. As mentioned above, by placing the reporting duty on the person with the most direct access to required information, Rule 901(a) is designed to minimize reporting burdens, which could facilitate a more efficient allocation of capital by reducing expenditures on security-based swap reporting infrastructure.

e. Embargo Rule

Rule 902(d), the Embargo Rule, prohibits the release of security-based swap transaction information to persons (other than a counterparty or post-trade processor) until that information has been transmitted to a registered SDR. The Embargo Rule is designed to promote competition among market participants in the security-based swap market by prohibiting persons who obtain knowledge of a security-based swap transaction shortly after execution from providing information about that transaction to third parties before that information is provided to a registered SDR so that it can be publicly disseminated. In the absence of the Embargo Rule, selected third parties who are told about executions could obtain an informational advantage relative to other market participants, reducing the ability of these other market participants to compete in the market. The potential benefits of Regulation SBSR with respect to competition would suffer in the absence of the Embargo Rule, because market participants who gain earlier access to information could maintain a high degree of information asymmetry in the market.

Rule 902(d), as adopted, includes a carve-out for post-trade processors, such as entities involved in comparing or clearing transactions. This carve-out is designed to promote efficiency in the processing of security-based swap transactions by recognizing that the policy goals of the Embargo Rule are not served by impeding the ability of security-based swap counterparties to obtain post-trade processing services. Post-trade processors must obtain information about a transaction to carry out their functions, even if the transaction has not yet been reported to a registered SDR. In the absence of the carve-out, efficiency could be harmed if post-trade processors were barred from obtaining information about the transaction until it had been publicly disseminated by a registered SDR. Without this carve-out, Regulation SBSR could cause the services and functions provided by post-trade processors to be delayed. This could result in a disruption of current market practices, where post-trade processors provide a variety of services to security-based swap counterparties, and thus a reduction in security-based swap market efficiency.

5. Impact of Cross-Border Aspects of Regulation SBSR

a. General Considerations

The security-based swap market is global in nature, and dealers and other market participants are highly interconnected within this global market. This interconnectedness provides a myriad of paths for liquidity and risk to move throughout the financial system and makes it difficult, in many cases, to precisely identify the impact of a particular entity's activity on financial stability or liquidity. As a corollary to this, it is difficult to isolate risk and liquidity problems to one geographical segment of the market. Further, as we noted in Section XXII(B)(1), security-based swap market participants in one jurisdiction can conduct activity through branches or subsidiaries located in another. These features of the market form the basis of the Commission's analysis of the effects of rule 908 on competition, efficiency and capital formation.

b. Regulatory Reporting and Public Dissemination

Rule 908(a) generally applies regulatory reporting and public dissemination requirements depending on the characteristics of the counterparties involved in a transaction. The regulatory reporting requirement allows the Commission and other relevant authorities the ability to monitor risk and conduct market surveillance. Because the security-based swap market represents a conduit through which financial risks from foreign markets can manifest themselves in the United States, the Commission believes that it is appropriate to focus on those transactions that are likely to serve as routes for risk transmission to the United States, either because a direct or indirect counterparty is a U.S. person, is registered with the

[1376] *See* 17 CFR 45.8 (providing a hierarchy for regulatory reporting of swaps); 17 CFR 43.3(a).

[1377] *See* DTCC VI at 8–9; DTCC VIII; MarkitSERV III at 4–5.

Commission as a security-based swap dealer or major security-based swap participant, or if the transaction is submitted to a clearing agency having its principal place of business within the United States. A regulatory reporting requirement that did not include within its scope such transactions would provide the Commission with such an incomplete view of transaction activity with potential to undermine the stability of U.S. financial markets that it would likely undermine the beneficial effects of a regulatory requirement on efficiency, competition and capital formation.

Under Regulation SBSR, as adopted, many of the provisions of Regulation SBSR will apply to a cross-border security-based swap if one of the direct counterparties, even if a non-U.S. person, is guaranteed by a U.S. person. For example, Rule 908(a)(1)(i) requires regulatory reporting of a security-based swap if there is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction. Because guarantees extended by U.S. persons on transactions executed abroad can nevertheless import risk into the United States, regulatory reporting of security-based swaps should extend to any security-based swap transaction having an indirect counterparty (*i.e.,* a guarantor) that is a U.S. person. This will improve the Commission's ability to monitor risks posed by activity guaranteed by U.S. persons and, as a result, reduce any adverse impacts on efficiency, competition, and capital formation that might arise without this ability or that might arise from attempts by certain market participants to shift activity into guaranteed foreign subsidiaries in order to evade Regulation SBSR.

Under the approach taken in this release, market participants could avoid regulatory reporting and public dissemination requirements by shifting activity into unguaranteed foreign subsidiaries, assuming there was no other basis for Regulation SBSR to apply, such as the direct counterparty being a U.S. person. Thus, the Commission's action in distinguishing between guaranteed and unguaranteed foreign subsidiaries of U.S. parent entities could affect how these parent entities allocate capital across the organization. For example, a U.S. parent could separately capitalize a foreign subsidiary to engage in transactions with non-U.S. persons. If the U.S. parent takes such action solely as a response to Title VII regulation, it is unlikely that such a move would improve the efficiency with which the parent allocates its capital.

The primary economic effects of public dissemination of transaction information are related to improving market transparency. Rule 908(a) defines a scope of transactions subject to this requirement in the cross-border context that considers the benefits of public dissemination, including effects on efficiency, competition, and capital formation. The scope defined by Rule 908(a) also considers the potential costs that market participants could incur if counterparties restructure their operations so that their activity falls outside of the scope of Regulation SBSR and continues in a more opaque market. Such a response could result in lessened competition in the security-based swap market within the United States, less efficient risk-sharing and pricing, and impaired capital formation.

The public dissemination requirements under Regulation SBSR could affect the behavior of foreign market participants in ways that reduce market access for U.S. persons. For example, some non-U.S. persons might seek to minimize their contact with U.S. persons in an effort to avoid having their transactions publicly disseminated. Moreover, to the extent that the Commission's rules treat the foreign business of U.S. persons and non-U.S. persons differently from their respective U.S. business, market participants could perceive an incentive to restructure their business to separate their foreign and U.S. operations.

Programmatic benefits of this scope, beyond those already noted as benefits of regulatory reporting, are related to the ability of market observers to condition their beliefs about the security-based swap market on realized transaction prices.[1378] Post-trade transparency in the U.S. security-based swap market could have spillover benefits in foreign markets, even if those foreign markets impose no (or only limited) post-trade transparency requirements.[1379] Post-trade transparency provided by Regulation SBSR will make transaction data available to any market observer in the world. These data will also allow global market observers to use security-based swap prices as an input for valuation models and trading decisions for the same or related instruments, thereby improving the efficiency of these processes.[1380]

Relevant authorities in other jurisdictions are currently engaged in implementing their own regulatory reforms of the OTC derivatives markets that could apply to participants in those foreign markets. Regulatory differences among jurisdictions in the global security-based swap markets could create incentives for business restructuring. To the extent that such restructuring results from regulatory incentives rather than economic fundamentals, efficiency in the real economy could be reduced. Conflicting regulations or unnecessary duplication of regulation also might lead to fragmented markets.[1381]

Even if the substance of statutory and regulatory efforts across jurisdictions is comparable, different jurisdictions may impose new regulatory requirements on different timelines. To the extent that these timelines or the underlying requirements differ, market participants might have the opportunity to take advantage of these differences by making strategic choices, at least in the short term, with respect to their transaction counterparties and business models. For example, at a larger scale, firms may choose whether to participate in or withdraw from the U.S. security-based swap market. As a result of exits, registered security-based swap dealers that are U.S. persons might have less access to foreign markets, unless they were to restructure their business to conduct foreign transactions through unguaranteed foreign subsidiaries whose transactions with non-U.S. persons would not be subject to the regulatory reporting and public dissemination under Regulation SBSR.

These potential restructurings could impact competition in the U.S. market. On one hand, the ability to restructure one's business rather than exit the U.S. market entirely to avoid application of Title VII to an entity's non-U.S. operations could reduce the number of entities that exit the market, thus

[1378] The effects of public dissemination are discussed more generally in Section XXII(C)(2); the economic effects of Rule 908 that relate to efficiency, competition, and capital formation are examined in Section XXII(D)(4)(i).

[1379] *See* Edwards, *et al., supra* note 1223. (presenting a model implying, and finding empirical evidence in TRACE data for, what the authors term a ''liquidity externality,'' *i.e.,* improved market quality in certain securities that were not yet TRACE-eligible, when related securities had become subject to TRACE post-trade transparency).

[1380] *See supra* Section XXII(C)(2)(a) (discussing the benefits of improved valuation).

[1381] *See, e.g.,* Arnoud W.A. Boot, Silva Dezelan, and Todd T. Milbourn, ''Regulatory Distortions in a Competitive Financial Services Industry,'' Journal of Financial Services Research, Vol. 17, No. 1 (2000) (showing that, in a simple industrial organization model of bank lending, a change in the cost of capital resulting from regulation results in a greater loss of profits when regulated banks face competition from non-regulated banks than when regulations apply equally to all competitors); Victor Fleischer, ''Regulatory Arbitrage,'' 89 Texas Law Review 227 (March 4, 2010) (discussing how, when certain firms are able to choose their regulatory structure, regulatory burdens are shifted onto those entities that cannot engage in regulatory arbitrage).

mitigating the negative effects on competition described above. On the other hand, non-registered U.S. persons may find that the only non-U.S. person registered security-based swap dealers that are willing to deal with them are those whose security-based swap business is sufficiently large to afford the compliance costs associated with regulatory reporting and public dissemination requirements. To the extent that smaller dealers have an incentive to exit the market, the overall level of competition in the market could decline.

The Commission is mindful that, in the near term and until full implementation of comparable requirements for regulatory reporting and public dissemination of security-based swaps in other jurisdictions, the rules may generate incentives for market participants to restructure and reduce contact with U.S. market participants. As a result, for example, U.S. market participants seeking to hedge risk could face higher prices for hedging or fewer opportunities to hedge at all, which could impede capital formation. Another result could be inefficiency in risk allocation, because those market participants who are best placed to take on risks shared through security-based swap activity might be discouraged from doing so because of perceived necessity to avoid regulatory reporting and public dissemination requirements under Title VII. Furthermore, U.S. market participants that are able to restructure their business across national boundaries to avoid regulation are likely to be the largest financial institutions that can bear the greatest risks. The remaining firms will likely be smaller and have less capital with which to offer liquidity to the market.

Restructuring of business lines to take advantage of low-transparency regimes also would impede transparency, as fewer transactions would be subject to public dissemination under Regulation SBSR. Market participants who had relocated abroad would still be able to free-ride on price formation generated by the public dissemination of others' transactions in the same or similar instruments while not contributing any transactions of their own. The value of regulatory reporting and public dissemination in the U.S. market would be reduced to the extent that liquidity migrates to jurisdictions that are less-transparent.[1382]

c. Substituted Compliance

Rule 908(c) provides that the Title VII requirements relating to regulatory reporting and public dissemination of security-based swaps may be satisfied by compliance with the rules of a foreign jurisdiction if the Commission issues an order determining that the jurisdiction has requirements that comparable to those of Regulation SBSR. Rule 908(c) is designed to promote efficiency, competition, and capital formation in the security-based swap market, to the extent practical, given the state of regulatory reform of the OTC derivatives market being applied by specific foreign jurisdictions.

The Commission believes a regulatory regime that allows for substituted compliance under comparable foreign rules promotes efficiency by reducing the need for certain market participants to double report security-based swaps (*i.e.,* once to a foreign trade repository or foreign regulatory authority and again to a registered SDR). Substituted compliance also has the potential to improve market and price efficiency by reducing or even eliminating instances of the same transaction being publicly disseminated under two separate systems. The Commission assumes that market observers will obtain and utilize last-sale information about security-based swaps from any available sources around the globe. Without substituted compliance, a security-based swap that met the jurisdictional requirements of Rule 908(a)(2) of Regulation SBSR as well as the public dissemination rules of a foreign jurisdiction would be publicly disseminated in both jurisdictions. It might be difficult or impossible for market observers to understand that the two trade reports represent the same transaction, which would thus distort their view of the market. If the Commission were to issue a substituted compliance order with respect to that jurisdiction, market observers would see only a single report (emanating from the foreign jurisdiction) of that transaction.

While the rules governing substituted compliance are not designed to promote efficiency at the regulatory level, they are designed at least to minimize detractions from regulatory efficiency. Under substituted compliance, certain cross-border transactions that otherwise would be reported to an SEC-registered SDR would instead be reported to a foreign trade repository or foreign regulatory authority. Final Rule 908(c) requires, among other things, direct electronic access to the foreign security-based swap data in order to make a substituted compliance determination. However, there could be some difficulties in normalizing and aggregating the data from SEC-registered SDRs with the data from the foreign trade repositories or foreign regulatory authorities.

Overall, the Commission believes that, on balance, there will be certain positive impacts on efficiency from allowing substituted compliance. The principle behind this approach is that the Commission would grant substituted compliance with respect to regulatory reporting and public dissemination of security-based swaps in another jurisdiction only if the requirements of that jurisdiction are comparable to otherwise applicable requirements in Regulation SBSR. If a foreign jurisdiction does not have a comparable regime for regulatory reporting and public dissemination of security-based swaps, allowing the possibility of substituted compliance could, on balance, erode any impacts of Regulation SBSR on efficiency, to the extent that the foreign jurisdiction's regulatory outcomes for regulatory reporting and public dissemination differ from those under Regulation SBSR. This result could be viewed as privately efficient by market participants who might otherwise restructure their activities to avoid public dissemination. However, the result also would be that many transactions with significant connections to the U.S. market would remain opaque, thus reducing opportunities for greater price competition and price discovery. Moreover, granting substituted compliance in such cases could provide incentives for foreign jurisdictions to impose lower regulatory standards for security-based swaps than those mandated by Title VII. Under the rules, as adopted, the Commission may not grant substituted compliance unless the foreign jurisdiction's rules are comparable to otherwise applicable requirements.

Under Rule 908(c), the Commission could make a determination of comparability for regulatory reporting and public dissemination either separately or together. A few commenters argued that the Commission should separate them, which would, for example, permit substituted compliance for regulatory reporting for a foreign jurisdiction, but not for public dissemination.[1383] The Commission agrees with the commenter's suggestions and has determined to take such an approach.

[1382] By the same token, regulatory reporting and public dissemination in the U.S. security-based swap market could have spillover benefits in foreign markets that trade the same or similar instruments as the U.S. market, even if those foreign markets impose no (or only limited) requirements. *See supra* note 1259.

[1383] *See supra* note 917.

Permitting substituted compliance for regulatory reporting but not for public dissemination might be privately efficient for firms, who would be obligated to report transactions to a foreign jurisdiction for regulatory purposes, but would be obligated to only report to a registered SDR only those data elements necessary for public dissemination under Regulation SBSR. The Commission could, for instance, permit transactions to be reported into a foreign jurisdiction with no or only limited public dissemination requirements.

One commenter correctly pointed out that there are a few classes of security-based swap for which Regulation SBSR requires regulatory reporting but not public dissemination and argued, therefore, that the Commission should permit itself to grant substituted compliance for regulatory reporting only (and not public dissemination) for these classes.[1384] The Commission agrees with the commenter and is adopting Rule 908(c) with certain revisions that will allow the Commission to issue a substituted compliance order with respect to regulatory reporting but not public dissemination in such cases.[1385] This revision should increase the scope of transactions that may enjoy the efficiency benefits of substituted compliance discussed above.

E. Aggregate Quantifiable Total Costs

Based on the foregoing, the Commission estimates that Regulation SBSR will impose an initial one-time cost of approximately $194,500,000 on all entities.[1386] The Commission estimates that Regulation SBSR will impose a total ongoing annual aggregate cost of approximately $275,500,000 for all entities.[1387] With regard to registered SDRs, the Commission estimates that Regulation SBSR will impose an initial aggregate one-time cost of approximately $63,700,000,[1388] and an ongoing aggregate annual cost of approximately $98,800,000.[1389]

XXIII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) of the Administrative Procedure Act,[1390] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities.'' [1391] Section 605(b) of the RFA [1392] states that this requirement shall not apply to any proposed rule or proposed rule amendment which, if adopted, would not have a significant economic impact on a substantial number of small entities.

In developing the final rules contained in Regulation SBSR, the Commission has considered their potential impact on small entities. For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (1) When used with reference to an ''issuer'' or a ''person,'' other than an investment company, an ''issuer'' or ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less; [1393] or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[1394] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[1395]

The Regulation SBSR Proposing Release stated that, based on input from security-based swap market participants and its own information, the Commission preliminarily believed that the majority of security-based swap transactions have at least one counterparty that is either a security-based swap dealer or major security-based swap participant, and that these entities, whether registered broker-dealers or not, would exceed the thresholds defining ''small entities'' set out above.[1396] Thus, the Commission noted that it preliminarily believed that neither of these types of entities would likely qualify as small entities for purposes of the RFA.[1397] Moreover, in the Regulation SBSR Proposing Release, the Commission noted that, even in cases where one of the counterparties to a security-based swap was outside of the categories of security-based swap dealer or major security-based swap participant, the Commission preliminarily did not believe any such entities would be ''small entities'' as defined in Commission Rule 0–10.[1398] In this regard, the Commission noted that feedback from industry participants and the Commission's own information about the security-based swap market (including a survey conducted by the Office of the Comptroller of the Currency) indicated that only persons or entities with assets significantly in excess of $5 million participate in the

[1384] *See* IIB Letter at 25. *See also* Rule 902(c).

[1385] *See supra* Section XV(E)(6).

[1386] The Commission derived its estimate from the following: [($360,000 (Rule 901 one-time costs on registered SDRs)) + ($20,000,000 (Rule 902 one-time costs on registered SDRs)) + ($2,000,000 (Rule 905 one-time costs on registered SDRs)) + ($330,000 (Rule 906 one-time costs on registered SDRs)) + ($41,000,000 (Rule 907 one-time costs on registered SDRs)) + ($3,190,000 (Rule 906 one-time costs on covered participants) + ($121,800,000 (Rule 901 one-time costs on reporting sides) + ($720,200 (Rule 903 one-time costs on SDR participants)) + ($3,547,500 (Rule 905 one-time costs on reporting sides) + ($1,540,000 (Rule 908(c) one-time costs on requesting entities)] = $194,487,700, or approximately $194,500,000.

[1387] The Commission derived its estimate from the following: [($455,000 (Rule 901 ongoing annual costs on registered SDRs)) + ($12,000,000 (Rule 902 ongoing annual costs on registered SDRs)) + ($45,000 (Rule 904 ongoing annual costs on registered SDRs)) + ($4,000,000 (Rule 905 ongoing annual costs on registered SDRs)) + ($300,000 (Rule 906 ongoing annual costs on registered SDRs)) + ($82,000,000 (Rule 907 ongoing annual costs on registered SDRs)) + ($1,870,000 (Rule 906 ongoing annual costs on covered participants)) + ($95,700,000 (Rule 901 ongoing annual costs on reporting sides)) + ($2,352,000 (Rule 903 one-time costs on SDR participants)) + ($1,192,500 (Rule 905 ongoing annual costs on reporting sides)) + ($64,000,000 (Rule 905 ongoing annual costs on non-reporting sides)) + ($13,400,000 (Rule 906 ongoing annual costs on all participants)) + ($1,540,000 (Rule 908(c) costs of requests in the first year)] = $275,444,500 or approximately $275,500,000.

[1388] The Commission derived its estimate from the following: [($360,000 (Rule 901 one-time costs on registered SDRs)) + ($20,000,000 (Rule 902 one-time costs on registered SDRs)) + ($2,000,000 (Rule 905 one-time costs on registered SDRs)) + ($330,000 (Rule 906 one-time costs on registered SDRs)) + ($41,000,000 (Rule 907 one-time costs on registered SDRs)] = $63,690,000 or approximately $63,700,000.

[1389] The Commission derived its estimate from the following: [($455,000 (Rule 901 ongoing annual costs on registered SDRs)) + ($1,000,000 (Rule 902 ongoing annual costs on registered SDRs)) + ($45,000 (Rule 904 ongoing annual costs on registered SDRs)) + ($4,000,000 (Rule 905 ongoing annual costs on registered SDRs)) + ($300,000 (Rule 906 ongoing annual costs on registered SDRs)) + ($82,000,000 (Rule 907 ongoing annual costs on registered SDRs)]] = $98,800,000.

[1390] 5 U.S.C. 603(a).

[1391] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small entity'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10 under the Exchange Act, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS–305).

[1392] 5 U.S.C. 605(b).

[1393] *See* 17 CFR 240.0–10(a).

[1394] 17 CFR 240.17a–5(d).

[1395] *See* 17 CFR 240.0–10(c).

[1396] *See* Regulation SBSR Proposing Release, 75 FR 75282.

[1397] *See id.*

[1398] *See id.* at 75283.

security-based swap market.[1399] As a result, the Commission stated its preliminarily belief that the vast majority of, if not all, security-based swap transactions are between large entities for purposes of the RFA.[1400]

Similarly, in the Regulation SBSR Proposing Release, the Commission stated its preliminarily belief that the entities likely to register as SDRs would not be small entities.[1401] Based on input from security-based swap market participants and its own information, the Commission stated its preliminarily belief that most if not all the registered SDRs would be part of large business entities, and that all registered SDRs would have assets exceeding $5 million and total capital exceeding $500,000.[1402] On this basis, the Commission preliminarily believed that the number of security-based swap transactions involving a small entity as that term is defined for purposes of the RFA would be *de minimis* and that no aspect of proposed Regulation SBSR would be likely to alter the type of counterparties presently engaging in security-based swap transactions.[1403] Therefore, the Commission preliminarily did not believe that proposed Regulation SBSR would impact any small entities.[1404]

As a result, in the Regulation SBSR Proposing Release, the Commission certified that Regulation SBSR would not have a significant economic impact on a substantial number of small entities for purposes of the RFA and requested written comments regarding this certification.[1405] Specifically, the Commission requested that commenters describe the nature of any impact on small entities, indicate whether they believe that participants and registered SDRs are unlikely to be small entities, and provide empirical data to support their responses.[1406] The Commission did not receive any comments contrary to its conclusion.

The Commission continues to believe that few if any security-based swap counterparties that would incur duties under Regulation SBSR, as adopted, are ''small entities'' as defined in Commission Rule 0–10. Feedback from industry participants and the Commission's own information about the security-based swap market indicate that only persons or entities with assets significantly in excess of $5 million participate in the security-based swap market.[1407] The Commission continues to believe that the vast majority of, if not all, security-based swap transactions are between large entities for purposes of the RFA.

Based on input from security-based swap market participants and its own information, the Commission continues to believe that registered SDRs would be part of large business entities, and that all registered SDRs would have assets exceeding $5 million and total capital exceeding $500,000. Therefore, the Commission continues to believe that none of the registered SDRs would be small entities.

The Commission believes that the number of security-based swap transactions involving a small entity as that term is defined for purposes of the RFA would be *de minimis.* Moreover, the Commission does not believe that any aspect of Regulation SBSR would be likely to alter the type of counterparties presently engaging in security-based swap transactions. Therefore, the Commission does not believe that Regulation SBSR would impact any small entities.

For the foregoing reasons, the Commission certifies that Regulation SBSR would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

XXIV. Statutory Basis and Text of Final Rules

Pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.,* and particularly Sections 3C(e), 11A(b), 13(m)(1), 13A(a), 23(a)(1), 30(c), and 36(a), 15 U.S.C. 78c–3(e), 78k–1(b), 78m(m)(1), 78m–1(a), 78w(a)(1), 78dd(c), and 78mm(a) thereof, the Commission is adopting Rules 900, 901, 902, 903, 904, 905, 906, 907, 908, and 909 under the Exchange Act.

List of Subjects in 17 CFR Part 242

Brokers, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 1. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–l(c), 78*l,* 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37, unless otherwise noted.

■ 2. The heading for part 242 is revised as set forth above.

■ 3. Add §§ 242.900, 242.901, 242.902, 242.903, 242.904, 242.905, 242.906, 242.907, 242.908, and 242.909 under an undesignated center heading to read as follows:

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

Sec.
242.900 Definitions
242.901 Reporting obligations.
242.902 Public dissemination of transaction reports.
242.903 Coded information.
242.904 Operating hours of registered security-based swap data repositories.
242.905 Correction of errors in security-based swap information.
242.906 Other duties of participants.
242.907 Policies and procedures of registered security-based swap data repositories.
242.908 Cross-border matters.
242.909 Registration of security-based swap data repository as a securities information processor.

§ 242.900 Definitions.

Terms used in §§ 242.900 through 242.909 that appear in Section 3 of the Exchange Act (15 U.S.C. 78c) have the same meaning as in Section 3 of the Exchange Act and the rules or regulations thereunder. In addition, for purposes of Regulation SBSR (§§ 242.900 through 242.909), the following definitions shall apply:

(a) *Affiliate* means any person that, directly or indirectly, controls, is controlled by, or is under common control with, a person.

(b) *Asset class* means those security-based swaps in a particular broad category, including, but not limited to, credit derivatives and equity derivatives.

(c) [Reserved].

(d) *Branch ID* means the UIC assigned to a branch or other unincorporated office of a participant.

(e) *Broker ID* means the UIC assigned to a person acting as a broker for a participant.

(f) *Business day* means a day, based on U.S. Eastern Time, other than a Saturday, Sunday, or a U.S. federal holiday.

(g) *Clearing transaction* means a security-based swap that has a registered clearing agency as a direct counterparty.

(h) *Control* means, for purposes of §§ 242.900 through 242.909, the

[1399] *See id.*
[1400] *See id.*
[1401] *See id.*
[1402] *See id.*
[1403] *See id.*
[1404] *See id.*
[1405] *See id.*
[1406] *See id.*
[1407] *See id. See also* Cross-Border Proposing Release, 78 FR 31205.

possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. A person is presumed to control another person if the person:

(1) Is a director, general partner or officer exercising executive responsibility (or having similar status or functions);

(2) Directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities; or

(3) In the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25 percent or more of the capital.

(i) *Counterparty* means a person that is a direct counterparty or indirect counterparty of a security-based swap.

(j) *Counterparty ID* means the UIC assigned to a counterparty to a security-based swap.

(k) *Direct counterparty* means a person that is a primary obligor on a security-based swap.

(*l*) *Direct electronic access* has the same meaning as in § 240.13n–4(a)(5) of this chapter.

(m) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), as amended.

(n) *Execution agent ID* means the UIC assigned to any person other than a broker or trader that facilitates the execution of a security-based swap on behalf of a direct counterparty.

(o) *Foreign branch* has the same meaning as in § 240.3a71–3(a)(1) of this chapter.

(p) *Indirect counterparty* means a guarantor of a direct counterparty's performance of any obligation under a security-based swap such that the direct counterparty on the other side can exercise rights of recourse against the indirect counterparty in connection with the security-based swap; for these purposes a direct counterparty has rights of recourse against a guarantor on the other side if the direct counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the guarantor in connection with the security-based swap.

(q) *Life cycle event* means, with respect to a security-based swap, any event that would result in a change in the information reported to a registered security-based swap data repository under § 242.901(c), (d), or (i), including: An assignment or novation of the security-based swap; a partial or full termination of the security-based swap; a change in the cash flows originally reported; for a security-based swap that is not a clearing transaction, any change to the title or date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract; or a corporate action affecting a security or securities on which the security-based swap is based (*e.g.,* a merger, dividend, stock split, or bankruptcy). Notwithstanding the above, a life cycle event shall not include the scheduled expiration of the security-based swap, a previously described and anticipated interest rate adjustment (such as a quarterly interest rate adjustment), or other event that does not result in any change to the contractual terms of the security-based swap.

(r) *Non-mandatory report* means any information provided to a registered security-based swap data repository by or on behalf of a counterparty other than as required by §§ 242.900 through 242.909.

(s) *Non-U.S. person* means a person that is not a U.S. person.

(t) *Parent* means a legal person that controls a participant.

(u) *Participant,* with respect to a registered security-based swap data repository, means a counterparty, that meets the criteria of § 242.908(b), of a security-based swap that is reported to that registered security-based swap data repository to satisfy an obligation under § 242.901(a).

(v) *Platform* means a national securities exchange or security-based swap execution facility that is registered or exempt from registration.

(w) *Platform ID* means the UIC assigned to a platform on which a security-based swap is executed.

(x) *Post-trade processor* means any person that provides affirmation, confirmation, matching, reporting, or clearing services for a security-based swap transaction.

(y) *Pre-enactment security-based swap* means any security-based swap executed before July 21, 2010 (the date of enactment of the Dodd-Frank Act (Pub. L. 111–203, H.R. 4173)), the terms of which had not expired as of that date.

(z) *Price* means the price of a security-based swap transaction, expressed in terms of the commercial conventions used in that asset class.

(aa) *Product* means a group of security-based swap contracts each having the same material economic terms except those relating to price and size.

(bb) *Product ID* means the UIC assigned to a product.

(cc) *Publicly disseminate* means to make available through the Internet or other electronic data feed that is widely accessible and in machine-readable electronic format.

(dd) [Reserved].

(ee) *Registered clearing agency* means a person that is registered with the Commission as a clearing agency pursuant to section 17A of the Exchange Act (15 U.S.C. 78q–1) and any rules or regulations thereunder.

(ff) *Registered security-based swap data repository* means a person that is registered with the Commission as a security-based swap data repository pursuant to section 13(n) of the Exchange Act (15 U.S.C. 78m(n)) and any rules or regulations thereunder.

(gg) *Reporting side* means the side of a security-based swap identified by § 242.901(a)(2).

(hh) *Side* means a direct counterparty and any guarantor of that direct counterparty's performance who meets the definition of indirect counterparty in connection with the security-based swap.

(ii) *Time of execution* means the point at which the counterparties to a security-based swap become irrevocably bound under applicable law.

(jj) *Trader ID* means the UIC assigned to a natural person who executes one or more security-based swaps on behalf of a direct counterparty.

(kk) *Trading desk* means, with respect to a counterparty, the smallest discrete unit of organization of the participant that purchases or sells security-based swaps for the account of the participant or an affiliate thereof.

(*ll*) *Trading desk ID* means the UIC assigned to the trading desk of a participant.

(mm) *Transaction ID* means the UIC assigned to a specific security-based swap transaction.

(nn) *Transitional security-based swap* means a security-based swap executed on or after July 21, 2010, and before the first date on which trade-by-trade reporting of security-based swaps in that asset class to a registered security-based swap data repository is required pursuant to §§ 242.900 through 242.909.

(oo) *Ultimate parent* means a legal person that controls a participant and that itself has no parent.

(pp) *Ultimate parent ID* means the UIC assigned to an ultimate parent of a participant.

(qq) *Unique Identification Code* or *UIC* means a unique identification code assigned to a person, unit of a person, product, or transaction.

(rr) *United States* has the same meaning as in § 240.3a71–3(a)(5) of this chapter.

(ss) *U.S. person* has the same meaning as in § 240.3a71–3(a)(4) of this chapter.

§ 242.901 Reporting obligations.

(a) *Assigning reporting duties.* A security-based swap, including a security-based swap that results from the allocation, termination, novation, or assignment of another security-based swap, shall be reported as follows:

(1) [Reserved].

(2) *All other security-based swaps.* For all security-based swaps other than platform-executed security-based swaps that will be submitted to clearing, the reporting side shall provide the information required by §§ 242.900 through 242.909 to a registered security-based swap data repository. The reporting side shall be determined as follows:

(i) [Reserved].

(ii) *Security-based swaps other than clearing transactions.* (A) If both sides of the security-based swap include a registered security-based swap dealer, the sides shall select the reporting side.

(B) If only one side of the security-based swap includes a registered security-based swap dealer, that side shall be the reporting side.

(C) If both sides of the security-based swap include a registered major security-based swap participant, the sides shall select the reporting side.

(D) If one side of the security-based swap includes a registered major security-based swap participant and the other side includes neither a registered security-based swap dealer nor a registered major security-based swap participant, the side including the registered major security-based swap participant shall be the reporting side.

(E) If neither side of the security-based swap includes a registered security-based swap dealer or registered major security-based swap participant:

(*1*) If both sides include a U.S. person, the sides shall select the reporting side.

(*2*) [Reserved].

(b) *Alternate recipient of security-based swap information.* If there is no registered security-based swap data repository that will accept the report required by § 242.901(a), the person required to make such report shall instead provide the required information to the Commission.

(c) *Primary trade information.* The reporting side shall report the following information within the timeframe specified in paragraph (j) of this section:

(1) The product ID, if available. If the security-based swap has no product ID, or if the product ID does not include the following information, the reporting side shall report:

(i) Information that identifies the security-based swap, including the asset class of the security-based swap and the specific underlying reference asset(s), reference issuer(s), or reference index;

(ii) The effective date;

(iii) The scheduled termination date;

(iv) The terms of any standardized fixed or floating rate payments, and the frequency of any such payments; and

(v) If the security-based swap is customized to the extent that the information provided in paragraphs (c)(1)(i) through (iv) of this section does not provide all of the material information necessary to identify such customized security-based swap or does not contain the data elements necessary to calculate the price, a flag to that effect;

(2) The date and time, to the second, of execution, expressed using Coordinated Universal Time (UTC);

(3) The price, including the currency in which the price is expressed and the amount(s) and currenc(ies) of any up-front payments;

(4) The notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed;

(5) If both sides of the security-based swap include a registered security-based swap dealer, an indication to that effect;

(6) Whether the direct counterparties intend that the security-based swap will be submitted to clearing; and

(7) If applicable, any flags pertaining to the transaction that are specified in the policies and procedures of the registered security-based swap data repository to which the transaction will be reported.

(d) *Secondary trade information.* In addition to the information required under paragraph (c) of this section, for each security-based swap for which it is the reporting side, the reporting side shall report the following information within the timeframe specified in paragraph (j) of this section:

(1) The counterparty ID or the execution agent ID of each counterparty, as applicable;

(2) As applicable, the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID of the direct counterparty on the reporting side;

(3) To the extent not provided pursuant to paragraph (c)(1) of this section, the terms of any fixed or floating rate payments, or otherwise customized or non-standard payment streams, including the frequency and contingencies of any such payments;

(4) For a security-based swap that is not a clearing transaction, the title and date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract;

(5) To the extent not provided pursuant to paragraph (c) of this section or other provisions of this paragraph (d), any additional data elements included in the agreement between the counterparties that are necessary for a person to determine the market value of the transaction;

(6) If applicable, and to the extent not provided pursuant to paragraph (c) of this section, the name of the clearing agency to which the security-based swap will be submitted for clearing;

(7) If the direct counterparties do not intend to submit the security-based swap to clearing, whether they have invoked the exception in Section 3C(g) of the Exchange Act (15 U.S.C. 78c–3(g));

(8) To the extent not provided pursuant to the other provisions of this paragraph (d), if the direct counterparties do not submit the security-based swap to clearing, a description of the settlement terms, including whether the security-based swap is cash-settled or physically settled, and the method for determining the settlement value; and

(9) The platform ID, if applicable.

(10) If the security-based swap arises from the allocation, termination, novation, or assignment of one or more existing security-based swaps, the transaction ID of the allocated, terminated, assigned, or novated security-based swap(s), except in the case of a clearing transaction that results from the netting or compression of other clearing transactions.

(e) *Reporting of life cycle events.* (1)(i) *Generally.* A life cycle event, and any adjustment due to a life cycle event, that results in a change to information previously reported pursuant to paragraph (c), (d), or (i) of this section shall be reported by the reporting side, except that the reporting side shall not report whether or not a security-based swap has been accepted for clearing.

(ii) [Reserved]

(2) All reports of life cycle events and adjustments due to life cycle events shall, within the timeframe specified in paragraph (j) of this section, be reported to the entity to which the original security-based swap transaction was reported and shall include the transaction ID of the original transaction.

(f) *Time stamping incoming information.* A registered security-based swap data repository shall time stamp, to the second, its receipt of any information submitted to it pursuant to paragraph (c), (d), (e), or (i) of this section.

(g) *Assigning transaction ID.* A registered security-based swap data

repository shall assign a transaction ID to each security-based swap, or establish or endorse a methodology for transaction IDs to be assigned by third parties.

(h) *Format of reported information.* A reporting side shall electronically transmit the information required under this section in a format required by the registered security-based swap data repository to which it reports.

(i) *Reporting of pre-enactment and transitional security-based swaps.* With respect to any pre-enactment security-based swap or transitional security-based swap in a particular asset class, and to the extent that information about such transaction is available, the reporting side shall report all of the information required by paragraphs (c) and (d) of this section to a registered security-based swap data repository that accepts security-based swaps in that asset class and indicate whether the security-based swap was open as of the date of such report.

(j) *Interim timeframe for reporting.* The reporting timeframe for paragraphs (c) and (d) of this section shall be 24 hours after the time of execution (or acceptance for clearing in the case of a security-based swap that is subject to regulatory reporting and public dissemination solely by operation of § 242.908(a)(1)(ii)), or, if 24 hours after the time of execution or acceptance, as applicable, would fall on a day that is not a business day, by the same time on the next day that is a business day. The reporting timeframe for paragraph (e) of this section shall be 24 hours after the occurrence of the life cycle event or the adjustment due to the life cycle event.

Appendix to 17 CFR 242.901 Reports Regarding the Establishment of Block Thresholds and Reporting Delays for Regulatory Reporting of Security-Based Swap Transaction Data

This appendix sets forth guidelines applicable to reports that the Commission has directed its staff to make in connection with the determination of block thresholds and reporting delays for security-based swap transaction data. The Commission intends to use these reports to inform its specification of the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts; and the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public in order to implement regulatory requirements under Section 13 of the Act (15 U.S.C. 78m). In producing these reports, the staff shall consider security-based swap data collected by the Commission pursuant to other Title VII rules, as well as any other applicable information as the staff may determine to be appropriate for its analysis.

(a) *Report topics.* As appropriate, based on the availability of data and information, the reports should address the following topics for each asset class:

(1) *Price impact.* In connection with the Commission's obligation to specify criteria for determining what constitutes a block trade and the appropriate reporting delay for block trades, the report generally should assess the effect of notional amount and observed reporting delay on price impact of trades in the security-based swap market.

(2) *Hedging.* In connection with the Commission's obligation to specify criteria for determining what constitutes a block trade and the appropriate reporting delay for block trades, the report generally should consider potential relationships between observed reporting delays and the incidence and cost of hedging large trades in the security-based swap market, and whether these relationships differ for interdealer trades and dealer to customer trades.

(3) *Price efficiency.* In connection with the Commission's obligation to specify criteria for determining what constitutes a block trade and the appropriate reporting delay for block trades, the report generally should assess the relationship between reporting delays and the speed with which transaction information is impounded into market prices, estimating this relationship for trades of different notional amounts.

(4) *Other topics.* Any other analysis of security-based swap data and information, such as security-based swap market liquidity and price volatility, that the Commission or the staff deem relevant to the specification of:

(i) The criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts; and

(ii) The appropriate time delay for reporting large notional security-based swap transactions (block trades).

(b) *Timing of reports.* Each report shall be complete no later than two years following the initiation of public dissemination of security-based swap transaction data by the first registered SDR in that asset class.

(c) *Public comment on the report.* Following completion of the report, the report shall be published in the **Federal Register** for public comment.

§ 242.902 Public dissemination of transaction reports.

(a) *General.* Except as provided in paragraph (c) of this section, a registered security-based swap data repository shall publicly disseminate a transaction report of a security-based swap, or a life cycle event or adjustment due to a life cycle event, immediately upon receipt of information about the security-based swap, or upon re-opening following a period when the registered security-based swap data repository was closed. The transaction report shall consist of all the information reported pursuant to § 242.901(c), plus any condition flags contemplated by the registered security-based swap data repository's policies and procedures that are required by § 242.907.

(b) [Reserved].

(c) *Non-disseminated information.* A registered security-based swap data repository shall not disseminate:

(1) The identity of any counterparty to a security-based swap;

(2) With respect to a security-based swap that is not cleared at a registered clearing agency and that is reported to the registered security-based swap data repository, any information disclosing the business transactions and market positions of any person;

(3) Any information regarding a security-based swap reported pursuant to § 242.901(i);

(4) Any non-mandatory report;

(5) Any information regarding a security-based swap that is required to be reported pursuant to §§ 242.901 and 242.908(a)(1) but is not required to be publicly disseminated pursuant to § 242.908(a)(2);

(6) Any information regarding a clearing transaction that arises from the acceptance of a security-based swap for clearing by a registered clearing agency or that results from netting other clearing transactions; or

(7) Any information regarding the allocation of a security-based swap.

(d) *Temporary restriction on other market data sources.* No person shall make available to one or more persons (other than a counterparty or a post-trade processor) transaction information relating to a security-based swap before the primary trade information about the security-based swap is sent to a registered security-based swap data repository.

§ 242.903 Coded information.

(a) If an internationally recognized standards-setting system that imposes fees and usage restrictions on persons that obtain UICs for their own usage that are fair and reasonable and not unreasonably discriminatory and that meets the criteria of paragraph (b) of this section is recognized by the Commission and has assigned a UIC to a person, unit of a person, or product (or has endorsed a methodology for assigning transaction IDs), the registered security-based swap data repository shall employ that UIC (or methodology for assigning transaction IDs). If no such system has been recognized by the Commission, or a recognized system has not assigned a UIC to a particular person, unit of a person, or product (or has not endorsed a methodology for assigning transaction IDs), the registered security-based swap data repository shall assign a UIC to that person, unit of person, or product using its own methodology (or endorse a methodology for assigning transaction IDs). If the

Commission has recognized such a system that assigns UICs to persons, each participant of a registered security-based swap data repository shall obtain a UIC from or through that system for identifying itself, and each participant that acts as a guarantor of a direct counterparty's performance of any obligation under a security-based swap that is subject to § 242.908(a) shall, if the direct counterparty has not already done so, obtain a UIC for identifying the direct counterparty from or through that system, if that system permits third-party registration without a requirement to obtain prior permission of the direct counterparty.

(b) A registered security-based swap data repository may permit information to be reported pursuant to § 242.901, and may publicly disseminate that information pursuant to § 242.902, using codes in place of certain data elements, provided that the information necessary to interpret such codes is widely available to users of the information on a non-fee basis.

§ 242.904 Operating hours of registered security-based swap data repositories.

A registered security-based swap data repository shall have systems in place to continuously receive and disseminate information regarding security-based swaps pursuant to §§ 242.900 through 242.909, subject to the following exceptions:

(a) A registered security-based swap data repository may establish normal closing hours during periods when, in its estimation, the U.S. market and major foreign markets are inactive. A registered security-based swap data repository shall provide reasonable advance notice to participants and to the public of its normal closing hours.

(b) A registered security-based swap data repository may declare, on an *ad hoc* basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. A registered security-based swap data repository shall, to the extent reasonably possible under the circumstances, avoid scheduling special closing hours during periods when, in its estimation, the U.S. market and major foreign markets are most active; and provide reasonable advance notice of its special closing hours to participants and to the public.

(c) During normal closing hours, and to the extent reasonably practicable during special closing hours, a registered security-based swap data repository shall have the capability to receive and hold in queue information regarding security-based swaps that has been reported pursuant to §§ 242.900 through 242.909.

(d) When a registered security-based swap data repository re-opens following normal closing hours or special closing hours, it shall disseminate transaction reports of security-based swaps held in queue, in accordance with the requirements of § 242.902.

(e) If a registered security-based swap data repository could not receive and hold in queue transaction information that was required to be reported pursuant to §§ 242.900 through 242.909, it must immediately upon re-opening send a message to all participants that it has resumed normal operations. Thereafter, any participant that had an obligation to report information to the registered security-based swap data repository pursuant to §§ 242.900 through 242.909, but could not do so because of the registered security-based swap data repository's inability to receive and hold in queue data, must promptly report the information to the registered security-based swap data repository.

§ 242.905 Correction of errors in security-based swap information.

(a) *Duty to correct.* Any counterparty to a security-based swap that discovers an error in information previously reported pursuant to §§ 242.900 through 242.909 shall correct such error in accordance with the following procedures:

(1) If a side that was not the reporting side for a security-based swap transaction discovers an error in the information reported with respect to such security-based swap, the counterparty shall promptly notify the reporting side of the error; and

(2) If the reporting side discovers an error in the information reported with respect to a security-based swap, or receives notification from its counterparty of an error, the reporting side shall promptly submit to the entity to which the security-based swap was originally reported an amended report pertaining to the original transaction report. If the reporting side reported the initial transaction to a registered security-based swap data repository, the reporting side shall submit an amended report to the registered security-based swap data repository in a manner consistent with the policies and procedures contemplated by § 242.907(a)(3).

(b) *Duty of security-based swap data repository to correct.* A registered security-based swap data repository shall:

(1) Upon discovery of an error or receipt of a notice of an error, verify the accuracy of the terms of the security-based swap and, following such verification, promptly correct the erroneous information regarding such security-based swap contained in its system; and

(2) If such erroneous information relates to a security-based swap that the registered security-based swap data repository previously disseminated and falls into any of the categories of information enumerated in § 242.901(c), publicly disseminate a corrected transaction report of the security-based swap promptly following verification of the trade by the counterparties to the security-based swap, with an indication that the report relates to a previously disseminated transaction.

§ 242.906 Other duties of participants.

(a) *Identifying missing UIC information.* A registered security-based swap data repository shall identify any security-based swap reported to it for which the registered security-based swap data repository does not have the counterparty ID and (if applicable) the broker ID, branch ID, execution agent ID, trading desk ID, and trader ID of each direct counterparty. Once a day, the registered security-based swap data repository shall send a report to each participant of the registered security-based swap data repository or, if applicable, an execution agent, identifying, for each security-based swap to which that participant is a counterparty, the security-based swap(s) for which the registered security-based swap data repository lacks counterparty ID and (if applicable) broker ID, branch ID, execution agent ID, desk ID, and trader ID. A participant of a registered security-based swap data repository that receives such a report shall provide the missing information with respect to its side of each security-based swap referenced in the report to the registered security-based swap data repository within 24 hours.

(b) *Duty to provide ultimate parent and affiliate information.* Each participant of a registered security-based swap data repository shall provide to the registered security-based swap data repository information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered security-based swap data repository, using ultimate parent IDs and counterparty IDs. Any such participant shall promptly notify the registered security-based swap data repository of any changes to that information.

(c) *Policies and procedures of registered security-based swap dealers and registered major security-based swap participants.* Each participant of a registered security-based swap data

repository that is a registered security-based swap dealer or registered major security-based swap participant shall establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with any obligations to report information to a registered security-based swap data repository in a manner consistent with §§ 242.900 through 242.909. Each such participant shall review and update its policies and procedures at least annually.

§ 242.907 Policies and procedures of registered security-based swap data repositories.

(a) *General policies and procedures.* With respect to the receipt, reporting, and dissemination of data pursuant to §§ 242.900 through 242.909, a registered security-based swap data repository shall establish and maintain written policies and procedures:

(1) That enumerate the specific data elements of a security-based swap that must be reported, which shall include, at a minimum, the data elements specified in § 242.901(c) and (d);

(2) That specify one or more acceptable data formats (each of which must be an open-source structured data format that is widely used by participants), connectivity requirements, and other protocols for submitting information;

(3) For specifying procedures for reporting life cycle events and corrections to previously submitted information, making corresponding updates or corrections to transaction records, and applying an appropriate flag to the transaction report to indicate that the report is an error correction required to be disseminated by § 242.905(b)(2), or is a life cycle event, or any adjustment due to a life cycle event, required to be disseminated by § 242.902(a);

(4) For:

(i) Identifying characteristic(s) of a security-based swap, or circumstances associated with the execution or reporting of the security-based swap, that could, in the fair and reasonable estimation of the registered security-based swap data repository, cause a person without knowledge of these characteristic(s) or circumstance(s), to receive a distorted view of the market;

(ii) Establishing flags to denote such characteristic(s) or circumstance(s);

(iii) Directing participants that report security-based swaps to apply such flags, as appropriate, in their reports to the registered security-based swap data repository; and

(iv) Applying such flags:

(A) To disseminated reports to help to prevent a distorted view of the market; or

(B) In the case of a transaction referenced in § 242.902(c), to suppress the report from public dissemination entirely, as appropriate;

(5) For assigning UICs in a manner consistent with § 242.903; and

(6) For periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and counterparty IDs.

(b) [Reserved].

(c) *Public availability of policies and procedures.* A registered security-based swap data repository shall make the policies and procedures required by §§ 242.900 through 242.909 publicly available on its Web site.

(d) *Updating of policies and procedures.* A registered security-based swap data repository shall review, and update as necessary, the policies and procedures required by §§ 242.900 through 242.909 at least annually. Such policies and procedures shall indicate the date on which they were last reviewed.

(e) A registered security-based swap data repository shall provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to §§ 242.900 through 242.909 and the registered security-based swap data repository's policies and procedures thereunder.

§ 242.908 Cross-border matters.

(a) *Application of Regulation SBSR to cross-border transactions.* (1) A security-based swap shall be subject to regulatory reporting and public dissemination if:

(i) There is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction; or

(ii) The security-based swap is accepted for clearing by a clearing agency having its principal place of business in the United States.

(2) A security-based swap that is not included within paragraph (a)(1) of this section shall be subject to regulatory reporting but not public dissemination if there is a direct or indirect counterparty on either or both sides of the transaction that is a registered security-based swap dealer or a registered major security-based swap participant.

(b) *Limitation on obligations.* Notwithstanding any other provision of §§ 242.900 through 242.909, a person shall not incur any obligation under §§ 242.900 through 242.909 unless it is:

(1) A U.S. person; or

(2) A registered security-based swap dealer or registered major security-based swap participant.

(c) *Substituted compliance*—(1) *General.* Compliance with the regulatory reporting and public dissemination requirements in sections 13(m) and 13A of the Act (15 U.S.C. 78m(m) and 78m–1), and the rules and regulations thereunder, may be satisfied by compliance with the rules of a foreign jurisdiction that is the subject of a Commission order described in paragraph (c)(2) of this section, provided that at least one of the direct counterparties to the security-based swap is either a non-U.S. person or a foreign branch.

(2) *Procedure.* (i) The Commission may, conditionally or unconditionally, by order, make a substituted compliance determination regarding regulatory reporting and public dissemination of security-based swaps with respect to a foreign jurisdiction if that jurisdiction's requirements for the regulatory reporting and public dissemination of security-based swaps are comparable to otherwise applicable requirements. The Commission may, conditionally or unconditionally, by order, make a substituted compliance determination regarding regulatory reporting of security-based swaps that are subject to § 242.908(a)(2) with respect to a foreign jurisdiction if that jurisdiction's requirements for the regulatory reporting of security-based swaps are comparable to otherwise applicable requirements.

(ii) A party that potentially would comply with requirements under §§ 242.900 through 242.909 pursuant to a substituted compliance order or any foreign financial regulatory authority or authorities supervising such a person's security-based swap activities may file an application, pursuant to the procedures set forth in § 240.0–13 of this chapter, requesting that the Commission make a substituted compliance determination regarding regulatory reporting and public dissemination with respect to a foreign jurisdiction the rules of which also would require reporting and public dissemination of those security-based swaps.

(iii) In making such a substituted compliance determination, the Commission shall take into account such factors as the Commission determines are appropriate, such as the scope and objectives of the relevant foreign regulatory requirements, as well as the effectiveness of the supervisory

compliance program administered, and the enforcement authority exercised, by the foreign financial regulatory authority to support oversight of its regulatory reporting and public dissemination system for security-based swaps. The Commission shall not make such a substituted compliance determination unless it finds that:

(A) The data elements that are required to be reported pursuant to the rules of the foreign jurisdiction are comparable to those required to be reported pursuant to § 242.901;

(B) The rules of the foreign jurisdiction require the security-based swap to be reported and publicly disseminated in a manner and a timeframe comparable to those required by §§ 242.900 through 242.909 (or, in the case of transactions that are subject to § 242.908(a)(2) but not to § 242.908(a)(1), the rules of the foreign jurisdiction require the security-based swap to be reported in a manner and a timeframe comparable to those required by §§ 242.900 through 242.909);

(C) The Commission has direct electronic access to the security-based swap data held by a trade repository or foreign regulatory authority to which security-based swaps are reported pursuant to the rules of that foreign jurisdiction; and

(D) Any trade repository or foreign regulatory authority in the foreign jurisdiction that receives and maintains required transaction reports of security-based swaps pursuant to the laws of that foreign jurisdiction is subject to requirements regarding data collection and maintenance; systems capacity, integrity, resiliency, availability, and security; and recordkeeping that are comparable to the requirements imposed on security-based swap data repositories by the Commission's rules and regulations.

(iv) Before issuing a substituted compliance order pursuant to this section, the Commission shall have entered into memoranda of understanding and/or other arrangements with the relevant foreign financial regulatory authority or authorities under such foreign financial regulatory system addressing supervisory and enforcement cooperation and other matters arising under the substituted compliance determination.

(v) The Commission may, on its own initiative, modify or withdraw such order at any time, after appropriate notice and opportunity for comment.

§ 242.909 Registration of security-based swap data repository as a securities information processor.

A registered security-based swap data repository shall also register with the Commission as a securities information processor on Form SDR (§ 249.1500 of this chapter).

By the Commission.

Dated: February 11, 2015.

Brent J. Fields,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations:

Appendix

Reopening of Comment Periods for Certain Rulemaking Releases and Policy Statement Applicable to Security-Based Swaps Proposed Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Action

[Release No. 34–69491; File No. S7–34–10]

http://www.sec.gov/comments/s7-34-10/s73410.shtml

- Email message from Larry E. Thompson, Managing Director and General Counsel, Depository Trust & Clearing Corporation (''DTCC''), to Stephen Luparello, SEC, dated December 10, 2014 (''DTCC X'').
- Letter from Marisol Collazo, Chief Executive Officer, DTCC Data Repository US LLC, to Elizabeth M. Murphy, Secretary, SEC, dated November 14, 2014 (''DTCC IX'').
- Letter from Angie Karna, Managing Director, Legal, Nomura Global Financial Products, Inc., to Brent J. Fields, Secretary, SEC, dated September 10, 2014 (''NGFP Letter'')
- Letter from Carl Levin, Chairman, U.S. Senate Permanent Subcommittee on Investigations, to Kevin M. O'Neill, Deputy Secretary, SEC, dated July 3, 2014 (''Levin Letter'').
- Email message from Christopher Young, Director, U.S. Public Policy, ISDA, to Thomas Eady, SEC, dated March 27, 2014 (''ISDA III'').
- Email message from Marisol Collazo, Chief Executive Officer, DTCC Data Repository US LLC, to Thomas Eady and Michael J. Gaw, SEC, dated March 24, 2014 (with attached letters submitted to the CFTC regarding CME Rule 1001) (''DTCC VIII'').
- Email message from Marisol Collazo, Chief Executive Officer, DTCC Data Repository US LLC, to Thomas Eady, SEC, dated March 21, 2014 (with attached message submitted to the CFTC (''DTCC VII'').
- Letter from Kim Taylor, President, Clearing, CME Group, and Kara L. Dutta, General Counsel, ICE Trade Vault (''ICE''), LLC, to Elizabeth M. Murphy, Secretary, Commission, dated November 19, 2013 (''CME/ICE Letter'').
- Letter from Kara L. Dutta, General Counsel, ICE Trade Vault, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated September 23, 2013 (''ICE Letter'').
- Letter from Matti Leppälä, Secretary General/CEO, PensionsEurope, to Elizabeth M. Murphy, Secretary, Commission, dated September 3, 2013 (''PensionsEurope Letter'').
- Letter from Americans for Financial Reform, to Elizabeth Murphy, Secretary, Commission, dated August 22, 2013 (''AFR Letter'').
- Letter from Anne-Marie Leroy, Senior Vice President and Group General Counsel, World Bank, and Fady Zeidan, Acting Deputy/General Counsel, International Finance Corporation, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''World Bank Letter'').
- Letter from Futures and Options Association, dated August 21, 2013 (''FOA Letter'').
- Letter from Kenneth E. Bentsen, Jr., President, Securities Industry and Financial Markets Association (''SIFMA''); Walt Lukken, President & Chief Executive Officer, Futures Industry Association (''FIA''); and Richard M. Whiting, Executive Director and General Counsel, The Financial Services Roundtable (''Roundtable''), to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''SIFMA/FIA/Roundtable Letter'').
- Letter from Per Sjöberg, Chief Executive Officer, and Christoffer Mohammar, General Counsel, TriOptima AB, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''TriOptima Letter'').
- Letter from Larry E. Thompson, General Counsel, DTCC, to Elizabeth M. Murphy, Secretary, SEC, dated August 21, 2013 (''DTCC VI'').
- Letter from Jeff Gooch, Head of Processing, Markit, Chair and CEO, MarkitSERV, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''MarkitSERV IV'').
- Letter from Coalition for Derivatives End-Users, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''CDEU Letter'').
- Letter from Kathleen Cronin, Senior Managing Director, General Counsel, CME Group Inc., to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''CME II'').
- Letter from Sarah A. Miller, Chief Executive Officer, Institute of International Bankers (''IIB''), to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''IIB Letter'').
- Letter from Sullivan & Cromwell LLP, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''Sullivan Letter'').
- Letter from Søren Elbech, Treasurer, and Jorge Alers, General Counsel, lnter-American Development Bank, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''IDB Letter'').
- Letter from Karrie McMillan, General Counsel, Investment Company Institute (''ICI'') and Dan Waters, Managing Director, ICI Global, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''ICI II'').
- Letter from Dennis M. Kelleher, President and CEO, Stephen W. Hall, Securities

Specialist, and Katelynn 0. Bradley, Attorney, Better Markets, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''Better Markets IV'').

- Letter from Monique S. Botkin, Associate General Counsel, Investment Adviser Association, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''IAA Letter'').
- Letter from Patrick Pearson, European Commission, dated August 21, 2013 (''Pearson Letter'').
- Letter from Lutz-Christian Funke, Senior Vice President, and Frank Czichowski, Senior Vice President and Treasurer, KfW, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''KfW Letter'').
- Letter from Koichi lshikura, Executive Chief of Operations for International Headquarters, Japan Securities Dealers Association, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''JSDA Letter'').
- Letter from Bruce E. Stern, Chairman, Association of Financial Guaranty Insurers, to Elizabeth M. Murphy, Secretary, Commission, dated August 20, 2013 (''AFGI Letter'').
- Letter from Ernst-Albrecht Brockhaus, Member of the Management Board, and Nico Zachert, Authorized Signatory, Legal/Compliance, FMS Wertmanagement, to Elizabeth M. Murphy, Secretary, Commission, dated August 2013 (''FMS Letter'').
- Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association (''MFA''), and Adam Jacobs, Director, Head of Markets Regulation, Alternative Investment Management Association, to Elizabeth M. Murphy, Secretary, Commission, dated August 19, 2013 (''MFA/AIMA Letter'').
- Letter from Jonathan B. Kindred and Shigesuke Kashiwagi, Co-chairs, Japan Financial Markets Council, to Elizabeth M. Murphy, Secretary, Commission, dated August 15, 2013 (''JFMC Letter'').
- Letter from Kevin Nixon, Managing Director, Institute of International Finance, to Elizabeth M. Murphy, Secretary, Commission, dated August 8, 2013 (''IIF Letter'').
- Letter from Larry E. Thompson, General Counsel, DTCC, to Elizabeth M. Murphy, Secretary, SEC, dated July 22, 2013 (''DTCC V'').
- Letter from Dennis Kelleher, President & CEO, and Stephen W. Hall, Securities Specialist, Better Markets, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated July 22, 2013 (''Better Markets III'').
- Letter from Chris Barnard, to Commission, dated July 15, 2013 (''Barnard II'').
- Letter from Gregory Ugwi, Strategist, ThinkNum.com, dated June 15, 2013 (''ThinkNum Letter'').
- Letter from FSR, FIA, IIB, International Swaps and Derivatives Association (''ISDA''), ICI, and SIFMA, to Elizabeth M. Murphy, Secretary, Commission, dated May 21, 2013 (''Six Associations Letter'').

Comments on Proposed Rule: Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information

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

http://www.sec.gov/comments/s7-34-10/s73410.shtml

- Letter from Thomas G. McCabe, Chief Operating Officer, OneChicago, to Elizabeth M. Murphy, Secretary, Commission, dated March 1, 2013 (''OneChicago II'').
- Letter from Elizabeth K. King, Head of Regulatory Affairs, GETCO, to Elizabeth M. Murphy, Secretary, Commission, dated March 21, 2012 (''GETCO Letter'').

Letter from Michael Hisler, Co-Founder, Swaps & Derivatives Market Association (''SDMA''), to Elizabeth M. Murphy, Secretary, Commission, dated October 19, 2011 (''SDMA II'').

- Letter from the ABA Securities Association, American Council of Life Insurers, FSR, FIA, IIB, ISDA, and SIFMA to David A. Stawick, Secretary, CFTC; Jennifer J. Johnson, Secretary, Federal Reserve Board; Robert E. Feldman, Executive Secretary, FDIC; Gary K. Van Meter, Director, Office of Regulatory Policy, Farm Credit Administration; Elizabeth M. Murphy, Secretary, Commission; Office of the Comptroller of the Currency; and Alfred M. Pollard, General Counsel, Federal Housing Finance Agency, dated September 8, 2011 (''Multiple Associations Letter'').
- Letter from Scott Pintoff, General Counsel, GFI Group, Inc. (''GFI''), to Elizabeth M. Murphy, Secretary, Commission, dated July 12, 2011 (''GFI Letter).
- Letter from Larry E. Thompson, General Counsel, the Depository Trust & Clearing Corporation (''DTCC''), to the Honorable Mary L. Schapiro, Chairman, Commission, and the Honorable Gary Gensler, Chairman, CFTC, dated June 3, 2011 (''DTCC IV'').
- Letter from Stephen Merkel, Chairman, Wholesale Markets Brokers' Association Americas (''WMBAA''), to the Honorable Mary L. Schapiro, Chairman, Commission, and the Honorable Gary Gensler, Chairman, CFTC, dated June 3, 2011 (''WMBAA III''). [**NOTE:** This comment letter is in fact dated ''June 3, *2010,''* but the Commission deems the true date to be June 3, *2011.* The comment letter references proposed Regulation SBSR, which the Commission issued in November 2010, and thus the comment could not have been submitted in June 2010.]
- Letter from John R. Gidman, Association of Institutional Investors, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated June 2, 2011 (''Institutional Investors Letter''). [**Note:** This comment letter is in fact dated ''June 2, *2010,''* but the Commission deems the true date to be June 2, *2011.* The comment letter references proposed Regulation SBSR, which the Commission issued in November 2010, and thus the comment could not have been submitted in June 2010.]
- Letter from Chris Koppenheffer, SDMA, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated June 1, 2011 (''SDMA I'').
- Letter from Richard M. Whiting, Executive Director and General Counsel, FSR, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated May 12, 2011 (''Roundtable Letter'').
- Letter from Davis Polk & Wardwell LLP on behalf of The Bank of Tokyo-Mitsubishi UFJ. Ltd., Mizuho Corporate Bank, Ltd., and Sumitomo Mitsui Banking Corporation, to David A. Stawick, Secretary, CFTC, Elizabeth M. Murphy, Secretary, Commission, and Jennifer L. Johnson, Secretary, Federal Reserve Board, dated May 6, 2011 (''Japanese Banks Letter'').
- Letter from Richard H. Baker, President and Chief Executive Officer, MFA, to the Honorable Mary L. Schapiro, Chairman, Commission, dated March 24, 2011 (''MFA II''), and attached ''MFA Recommended Timeline for Adoption and Implementation of Final Rules Pursuant to Title VII of the Dodd-Frank Act'' (''MFA Recommended Timeline'').
- Letter from Davis Polk & Wardwell LLP on behalf of Barclays Bank PLC, PNP Paribas S.A., Credit Suisse AG, Deutsche Bank AG, HSBS, Nomura Securities International, Inc., Rabobank Nederland, Royal Bank of Canada, The Royal Bank of Scotland Group, PLC, Société Générale, The Toronto-Dominion Bank, and UBS AG, to David A. Stawick, Secretary, CFTC, Elizabeth M. Murphy, Secretary, Commission, and Jennifer L. Johnson, Secretary, Federal Reserve Board, dated February 17, 2011 (''Davis Polk II'').
- Letter from Robert Carpenter, President and Chief Executive Officer, GS1 U.S., Miguel A. Lopera, Chief Executive Officer, GS1 Global, and Allan D. Grody, President, Financial Inter Group, to Elizabeth Murphy, Secretary, Commission, dated February 14, 2011 (''GS1 Letter'') and ''GS1 & Financial InterGroup Response to Securities & Exchange Commission'' (''GS1 Proposal'').
- Letter from Edward J. Rosen, Cleary Gottlieb Steen & Hamilton LLP, on behalf of Bank of America Merrill Lynch, BNP Paribas, Citi, Credit Agricole Corporate and Investment Bank, Credit Suisse Securities (USA), Deutsche Bank AG, Morgan Stanley, Nomura Securities International, Inc., PNC Bank, Société General, UBS Securities LLC, and Wells Fargo & Company, to Elizabeth M. Murphy, Secretary, Commission, and David A. Stawick, Secretary, CFTC, dated February 14, 2011 (''Cleary II'').
- Letter from Charles Llewellyn, Regional Legal Counsel—Americas, Society for Worldwide Interbank Financial Telecommunication SCRL (''SWIFT''), to the Commission, dated February 14, 2011 (''SWIFT Letter'').
- Letter from Patrick Durkin, Managing Director, Barclays Capital Inc. (''Barclays''), to Elizabeth M. Murphy, Secretary, Commission, dated February 11, 2010

(''Barclays Letter''). [**Note:** This comment letter is in fact dated ''February 11, *2010,''* but the Commission deems the true date to be February 11, *2011.* The comment letter references proposed Regulation SBSR, which the Commission issued in November 2010, and thus the comment could not have been submitted in February 2010.]

- Letter from Daniel G. Viola, Partner, Sadis & Goldberg LLP, to the CFTC and the Commission, dated February 7, 2011 (''Viola Letter'').
- Letter from Andrew Downes, Managing Director, UBS Investment Bank, and James B. Fuqua, Managing Director, UBS Securities LLC, to Elizabeth M. Murphy, Secretary, Commission, dated February 7, 2011 (''UBS Letter'').
- Letter from Cravath, Swaine & Moore, LLP, to Elizabeth M. Murphy, Secretary, Commission, dated February 6, 2011 (''Cravath Letter'').
- Letter from Richard G. Ketchum, Chairman and Chief Executive Officer, Financial Industry Regulatory Authority (''FINRA''), to Elizabeth M. Murphy, Secretary, Commission, dated January 27, 2011 (''FINRA Letter'').
- Letter from David G. Downey, Chief Executive Officer, OneChicago, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated January 26, 2011 (''OneChicago I'').
- Letter from Dennis M. Kelleher, President and Chief Executive Officer, Stephen W. Hall, Securities Specialist, and Wallace C. Turbeville, Derivatives Specialist, Better Markets, Inc. (''Better Markets''), to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2011 (''Better Markets II'').
- Letter from Kevin Gould, President, Markit North America, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2011 (''Markit I'').
- Letter from Jeff Gooch, Chief Executive Officer, MarkitSERV LLC, to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2011 (''MarkitSERV I'').
- Letter from Naphtali M. Hamlet, dated January 22, 2011 (''Hamlet Letter'').
- Letter from Dennis M. Kelleher, President and Chief Executive Officer, Wallace C. Turbeville, Derivatives Specialist, and Stephen W. Hall, Better Markets, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''Better Markets I'').
- Letter from Craig S. Donohue, Chief Executive Officer, CME Group, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''CME I'').
- Letter from Larry E. Thompson, General Counsel, DTCC, dated January 18, 2011 (''DTCC II'').
- Letter from Beckwith B. Miller, Chief Executive Officer, Ethics Metrics LLC, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''Ethics Metrics Letter'').
- Letter from Karrie McMillan, General Counsel, ICI, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''ICI I'').
- Letter from Robert Pickel, Executive Vice Chairman, ISDA, and Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''ISDA/SIFMA I''), and accompanying study, ''Block trade reporting for over-the-counter derivatives markets'' (''ISDA/SIFMA Block Trade Study'').
- Letter from Roger Liddell, Chief Executive, LCH.Clearnet Group Limited, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''LCH.Clearnet Letter'').
- Letter from Stuart J. Kaswell, Executive Vice President, Managing Director, and General Counsel, Managed Funds Association, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''MFA I'').
- Letter from Timothy W. Cameron, Managing Director, Asset Management Group, SIFMA, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''SIFMA I'').
- Letter from Lee H. Olesky, Chief Executive Officer, and Douglas L. Friedman, General Counsel, Tradeweb Markets LLC, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''Tradeweb Letter'').
- Letter from Gus Sauter, Managing Director and Chief Investment Officer, and John Hollyer, Principal and Head of Risk Management and Strategy Analysis, Vanguard, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''Vanguard Letter'').
- Letter from Julian Harding, Chairman, WMBAA, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''WMBAA II'').
- Letter from R. Martin Chavez, Managing Director, Goldman, Sachs & Co., David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''Goldman Sachs Letter'').
- Letter from R. Glenn Hubbard, Co-Chair, John L. Thornton, Co-Chair, and Hal S. Scott, Director, Committee on Capital Markets Regulation, David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''CCMR I'').
- Letter from Adam Litke, Bloomberg L.P., to Elizabeth M. Murphy, Secretary, Commission, dated January 14, 2011 (''Bloomberg Letter'').
- Letter from Laurel Leitner, Senior Analyst, Council of Institutional Investors, to Elizabeth M. Murphy, Secretary, Commission, dated January 13, 2011 (''CII Letter'').
- Letter from Jeremy Barnum, Managing Director, and Don Thompson, Managing Director and Associate General Counsel, J.P. Morgan, David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated January 12, 2011 (''J.P. Morgan Letter'').
- Letter from Davis Polk & Wardwell LLP on behalf of Barclays Bank PLC, PNP Paribas S.A., Deutsche Bank AG, Royal Bank of Canada, The Royal Bank of Scotland Group, PLC, Société Générale, UBS AG, to David A. Stawick, Secretary, CFTC, Elizabeth M. Murphy, Secretary, Commission, and Jennifer L. Johnson, Secretary, Federal Reserve Board, dated January 11, 2011 (''Davis Polk I'').
- Letter from Suzanne H. Shatto, dated January 1, 2011 (''Shatto Letter'').
- Letter from Spencer Bachus, Ranking Member, Committee on Financial Services, and Frank Lucas, Ranking Member, Committee on Agriculture, U.S. House of Representatives, to The Honorable Timothy Geithner, Secretary, Department of Treasury, the Honorable Gary Gensler, Chairman, CFTC, the Honorable Mary Schapiro, Chairman, Commission, and the Honorable Ben Bernanke, Chairman, Federal Reserve, dated December 16, 2010 (''Bachus/Lucas Letter'').
- Letter from Chris Barnard, dated December 3, 2010 (''Barnard I'').
- Letter from Laura J. Schisgall, Managing Director and Senior Counsel, Société Générale, to Ananda Radhakrishnan, Director, Division of Clearing and Intermediary Oversight, CFTC, John M. Ramsay, Deputy Director, Division of Trading and Markets, SEC, Mark E. Van Der Weide, Senior Associate Director, Federal Reserve Board, dated November 23, 2010 (''Société Générale Letter'').
- Letter from Julian Harding, WMBAA, David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated November 19, 2010 (''WMBAA I'').

Comments on Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act

[Release No. 34–67177; File No. S7–05–12[

http://www.sec.gov/comments/s7-05-12/s70512.shtml

- Letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, to Elizabeth M. Murphy, Secretary, Commission, dated August 13, 2012 (''SIFMA II'').

Comments on Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants

[Release No. 34–69490; File No. S7–02–13]

http://www.sec.gov/comments/s7-02-13/s70213.shtml

- Letter from Karel Engelen, Senior Director, Head of Data, Reporting & FpML, ISDA, to Elizabeth M. Murphy, Secretary, Commission, dated November 14, 2014 (''ISDA IV'').
- Letter from Catherine T. Dixon, Chair, Federal Regulation of Securities Committee, American Bar Association, to Elizabeth M. Murphy, Secretary, Commission, dated October 2, 2013 (''ABA Letter'').
- Letter from Adam C. Cooper, Senior Managing Director and Chief Legal Officer,

Citadel LLC, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''Citadel Letter'').
- Letter from R. Glenn Hubbard, John L. Thornton, Co-Chairs, and Hal S. Scott, Director, Committee on Capital Markets Regulation, to Elizabeth M. Murphy, Secretary, Commission, and Gary Barnett, Director, CFTC, dated August 17, 2013 (''CCMR II'').
- Letter from Robert Pickel, ISDA, to Elizabeth M. Murphy, Secretary, Commission, dated August 14, 2013 (''ISDA II'').
- Letter from Masaaki Tanaka, Deputy President, Mitsubishi UFJ Financial Group, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated August 8, 2013 (''Mitsubishi Letter'').

Comments on Acceptance of Public Submissions for a Study on International Swap Regulation Mandated by Section 719(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act

[Release No. 34–64926; File No. 4–635]

http://www.sec.gov/comments/4-635/4-635.shtml

- Letter from Jiří Król, Director of Government and Regulatory Affairs, Alternative Investment Management Association Limited to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated September 26, 2011 (''AIMA Letter'').

Comments on Product Definitions Contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act

[Release No. 33–9204; File No. S7–16–11]

http://www.sec.gov/comments/s7-16-11/s71611.shtml

- Letter from Jacques Mirante-Péré, Chief Financial Officer, and Jan De Bel, General Counsel, Council of Europe Development Bank, dated July 22, 2011 (''CEB Letter'').
- Letter from A. Querejeta, Secretary General and General Counsel, and B. de Mazières, Director General, European Investment Bank, to David A Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, SEC, dated July 22, 2011 (''EIB Letter'').
- Letter from Günter Pleines, Head of Banking Department, and Diego Devos, General Counsel, Bank for International Settlements, to David A Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, SEC, dated July 20, 2011 (''BIS Letter'').

Real-Time Reporting: Title VII Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act

http://www.sec.gov/comments/df-title-vii/real-time-reporting/real-time-reporting.shtml

- Letter from FIA, the Financial Services Forum (''FSF''), ISDA, and SIFMA to David A Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, SEC, dated May 4, 2011 (''FIA/FSF/ISDA/SIFMA Letter'').
- Letter from Edward J. Rosen, Cleary Gottlieb Steen & Hamilton LLP on behalf of Bank of America Merrill Lynch, Barclays Capital, BNP Paribas, Citi, Credit Agricole Corporate and Investment Bank, Credit Suisse Securities (USA), Deutsche Bank AG, HSBC, Morgan Stanley, Nomura Securities International, Inc., PNC Bank, National Association, UBS Securities LLC, and Wells Fargo & Company, to David A Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, SEC, dated October 25, 2010 (''Cleary I'').
- Letter from James W. Toffey, Chief Executive Officer, Benchmark Solutions, to David A Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, SEC, dated October 1, 2010 (''Benchmark Letter'').

Comments on Reporting of Security-Based Swap Transaction Data

[Release No. 34–63094; File No. s7–28–10]

http://www.sec.gov/comments/s7-28-10/s72810.shtml

- Letter from Larry E. Thompson, General Counsel, DTCC, to Elizabeth M. Murphy, Secretary, Commission, dated December 20, 2010 (''DTCC I'').
- Letter from Robert Pickel, Executive Vice Chairman, ISDA, to Elizabeth Murphy, Secretary, Commission, dated December 10, 2010 (''ISDA I'').
- Letter from Ernest C. Goodrich, Jr., Managing Director—Legal Department, Deutsche Bank AG, and Marcel Riffaud, Managing Director, Legal Department, Deutsche Bank AG, to David A. Stawick, Secretary, CFTC, and to Elizabeth M. Murphy, Secretary, Commission, dated November 5, 2010 (''Deutsche Bank Letter'').

Comments on Proposed Rule: Registration and Regulation of Security-Based Swap Execution Facilities

[Release No. 34–63825; File No. S7–06–11]

http://www.sec.gov/comments/s70611/s70611.shtml

- Letter from the American Benefits Council to Elizabeth M. Murphy, Secretary, Commission, dated April 8, 2011 (''ABC Letter'').
- Letter from Joanne Medero, Richard Prager, and Supurna VedBrat, BlackRock, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated April 4, 2011 (''BlackRock Letter'').
- Letter from Kevin Gould, President, Markit North America, Inc., to Elizabeth Murphy, Secretary, Commission, dated April 4, 2011 (''Markit II'').
- Letter from Robert Pickel, Executive Vice Chairman, ISDA, and Kenneth E. Bentsen, Jr. Executive Vice President, Public Policy and Advocacy, SIFMA, to Elizabeth M. Murphy, Secretary, Commission, dated April 4, 2011 (''ISDA/SIFMA II'').
- Letter from Jeff Gooch, Chief Executive Officer, MarkitSERV, to Elizabeth Murphy, Secretary, Commission, dated April 4, 2011 (''MarkitSERV II'').
- Letter from Nancy C. Gardner, Executive Vice President and General Counsel, Markets Division, Thomson Reuters, to Elizabeth M. Murphy, Secretary, Commission, dated April 4, 2011 (''Thomson Reuters Letter'').
- Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, MFA, to Elizabeth M. Murphy, Secretary, Commission, dated April 4, 2011 (''MFA III'').
- Letter from Nicholas J. Stephan, Chief Executive Officer, Phoenix Partners Group LP to Elizabeth M. Murphy, Secretary, Commission, dated April 4, 2011 (''Phoenix Letter'').

Comments on Proposed Rule: Security-Based Swap Data Repository Registration, Duties, and Core Principles

[Release No. 34–63347; File No. S7–35–10]

http://www.sec.gov/comments/s73510/s73510.shtml

- Letter from Larry E. Thompson, General Counsel, DTCC, to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2011 (''DTCC III'').

Comments on Joint Public Roundtable on International Issues Relating to the Implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act

[Release No. 34–64939; File No. 4–636]

http://www.sec.gov/comments/4-636/4-636.shtml

- Letter from Edward J. Rosen, Cleary Gottlieb Steen & Hamilton LLP, on behalf of Bank of America Merrill Lynch, Barclays Capital, BNP Paribas, Citi, Creédit Agricole Corporate and Investment Bank, Credit Suisse Securities (USA), Deutsche Bank AG, HSBC, Morgan Stanley, Nomura Securities International, Inc., Société Générale, UBS Securities LLC, to David A. Stawick, Secretary, CFTC; Elizabeth M. Murphy, Secretary, SEC; Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve Board (''Federal Reserve Board''); Office of the Comptroller of the Currency; Robert E. Feldman, Executive Secretary, Federal Deposit Insurance Corporation (''FDIC''); Alfred M. Pollard, General Counsel, Federal Housing Finance Agency; and Gary K. Van Meter, Director, Office of Regulatory Policy, Farm Credit Administration, dated September 20, 2011 (''Cleary III'').
- Letter from Kevin Gould, President, Markit North America, Inc., to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated September 19, 2011 (''Markit III'').
- Letter from Jeff Gooch, Chief Executive Officer, MarkitSERV, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated September 19, 2011 (''MarkitSERV III'').

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