SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

Release No. 34-78321; File No. S7-03-15

RIN 3235-AL71

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

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is adopting certain amendments to Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information ("Regulation SBSR"). Specifically, new Rule 901(a)(1) of Regulation SBSR requires a platform (i.e., a national securities exchange or security-based swap execution facility ("SB SEF") that is registered with the Commission or exempt from registration) to report a security-based swap executed on such platform that will be submitted to clearing. New Rule 901(a)(2)(i) of Regulation SBSR requires a registered clearing agency to report any security-based swap to which it is a counterparty. The Commission is adopting certain conforming amendments to other provisions of Regulation SBSR in light of the newly adopted amendments to Rule 901(a), and an amendment that would require registered security-based swap data repositories ("SDRs") to provide the security-based swap transaction data that they are required to publicly disseminate to the users of the information on a non-fee basis. The Commission also is adopting amendments to Rule 908(a) to extend Regulation SBSR's regulatory reporting and public dissemination requirements to additional types of cross-border security-based swaps. The Commission is offering guidance regarding the application of Regulation SBSR to prime brokerage transactions and to the allocation of cleared security-based swaps. Finally, the

Commission is adopting a new compliance schedule for the portions of Regulation SBSR for which the Commission has not previously specified compliance dates.

DATES: Effective Date: October 11, 2016.

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

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SUPPLEMENTARY INFORMATION:

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I. Introduction

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

In February 2015, the Commission adopted Regulation SBSR,[5] which consists of Rules 900 to 909 under the Exchange Act and provides for the regulatory reporting and public dissemination of security-based swap transactions. At the same time that it adopted Regulation SBSR, the Commission also proposed certain additional rules and guidance relating to regulatory reporting and public dissemination of security-based swap transactions that were not addressed

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

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

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

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

5 Securities Exchange Act Release No. 74244 (February 11, 2015), 80 FR 14564 (March 19, 2015) ("Regulation SBSR Adopting Release"). The Commission initially proposed Regulation SBSR in November 2010. See Securities Exchange Act Release No. 63346 (November 19, 2010), 75 FR 75207 (December 2, 2010) ("Regulation SBSR Proposing Release"). In May 2013, the Commission re-proposed the entirety of Regulation SBSR as part of a larger release that proposed rules and interpretations regarding the application of Title VII of the Dodd-Frank Act ("Title VII") to cross-border security-based swap activities. See Securities Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30967 (May 23, 2013) ("Cross-Border Proposing Release").

in the Regulation SBSR Adopting Release.[6] In April 2015, the Commission proposed certain rules that would address the application of Title VII requirements to security-based swap activity engaged in by non-U.S. persons within the United States,[7] including how Regulation SBSR would apply to such activity, and certain related issues. In this release, the Commission is adopting, with a number of revisions, the amendments to Regulation SBSR contained in the Regulation SBSR Proposed Amendments Release and the U.S. Activity Proposal.

The Commission received 18 comments on the Regulation SBSR Proposed Amendments Release[8] and 16 comments on the U.S. Activity Proposal, of which seven addressed issues

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6 Securities Exchange Act Release No. 74244 (February 11, 2015), 80 FR 14740 (March 19, 2015) ("Regulation SBSR Proposed Amendments Release").

7 Securities Exchange Act Release No. 74834 (April 29, 2015), 80 FR 27444 (May 13, 2015) ("U.S. Activity Proposal").

8 See letters to Brent J. Fields, Secretary, Commission, from Larry E. Thompson, Vice Chairman and General Counsel, Depository Trust & Clearing Corporation ("DTCC"), dated May 4, 2015 ("DTCC Letter"); Susan Milligan, Head of U.S. Public Affairs, LCH.Clearnet Group Limited, dated May 4, 2015 ("LCH.Clearnet Letter"); Marcus Schüler, Head of Regulatory Affairs, Markit, dated May 4, 2015 ("Markit Letter"); and Vincent A. McGonagle, Director, Division of Market Oversight, and Phyllis P. Dietz, Acting Director, Division of Clearing and Risk, Wholesale Market Brokers' Association, Americas ("WMBAA"), dated May 4, 2015 ("WMBAA Letter"); letters to Elizabeth M. Murphy, Secretary, Commission, from Marisol Collazo, Chief Executive Officer, DTCC Data Repository (U.S.) LLC, Bruce A. Tupper, President, ICE Trade Vault, LLC, and Jonathan A. Thursby, Global Head of Repository Services, CME Group, dated June 10, 2015 ("DTCC/ICE/CME Letter"); Kara Dutta, General Counsel, and Bruce A. Tupper, President, ICE Trade Vault, LLC, dated May 4, 2015 ("ICE Letter"); Tara Kruse, Director, Co-Head of Data, Reporting, and FpML, International Swaps and Derivatives Association, Inc. ("ISDA"), and Kyle Brandon, Managing Director, Director of Research, Securities Industry and Financial Markets Association ("SIFMA"), dated May 4, 2015 ("ISDA/SIFMA Letter"); undated letter from Timothy W. Cameron, Managing Director-Head, and Laura Martin, Managing Director and Associate General Counsel, Asset Management Group, SIFMA ("SIFMA-AMG II"); letters to the Secretary, Commission, from Dennis M. Kelleher, President and Chief Executive Officer, Stephen W. Hall, Securities Specialist, and Todd Philips, Attorney, Better Markets, Inc., dated May 4, 2015 ("Better Markets Letter"); Allan D. Grody, President, Financial InterGroup Holdings Ltd, dated May 18, 2015 ("Financial InterGroup Letter"); and Tara Kruse, Director, Co-Head of Data, Reporting, and FpML, ISDA, dated November 25, 2015 ("ISDA III"); letter to

relating to Regulation SBSR.[9] Below, the Commission responds to issues raised in those comments and discusses the amendments to Regulation SBSR being adopted herein. Some commenters directed comments to the rules the Commission already adopted in the Regulation SBSR Adopting Release.[10] As the Commission stated in the Regulation SBSR Proposed Amendments Release, however, the Commission did not reopen comment on the rules that it adopted in the Regulation SBSR Adopting Release.[11] Accordingly, these comments are beyond the scope of this release and are not addressed herein.

Michael Gaw, Assistant Director, Office of Market Supervision ("OMS"), Division of Trading and Markets, Commission, from Bert Fuqua, General Counsel, Investment Bank Americas Legal, UBS AG, and Michael Loftus, Managing Director, Investment Bank Americas Legal, UBS AG, dated May 6, 2016 ("UBS Letter"); letter to Michael Gaw, Assistant Director, OMS, Division of Trading and Markets ("Division"), Commission, and Tom Eady, Senior Policy Advisor, Division, Commission, from Tara Kruse, Director, Co-Head of Data, Reporting and FpML, ISDA, dated August 3, 2015 ("ISDA II"); letter from Chris Barnard, dated May 4, 2015 ("Barnard I"). Four comments, although submitted to the comment file for the Regulation SBSR Proposed Amendments Release, were not germane to the proposal and are not considered here.

9 See UBS Letter and letters to Brent J. Fields, Secretary, Commission, from Dan Waters, Managing Director, ICI Global, dated July 13, 2015 ("ICI Global Letter"); Sarah A. Miller, Chief Executive Officer, Institute of International Bankers ("IIB"), dated July 13, 2015 ("IIB Letter"); David Geen, General Counsel, ISDA, dated July 13, 2015 ("ISDA I"); Timothy W. Cameron, Managing Director-Head, and Laura Martin, Managing Director and Associate General Counsel, Asset Management Group, SIFMA, dated July 13, 2015 ("SIFMA-AMG I"); Kenneth E. Bentsen, Jr., President and Chief Executive Officer, SIFMA, and Rich Foster, Senior Vice President and Senior Counsel for Regulatory and Legal Affairs, Financial Services Roundtable ("FSR"), dated July 13, 2015 ("SIFMA/FSR Letter"); letter from Chris Barnard, dated June 26, 2015 ("Barnard II").

10 The issues raised by these commenters included, for example, the 24-hour reporting delay adopted in the Regulation SBSR Adopting Release; the ability to report all transaction information required by Regulation SBSR in light of certain foreign privacy laws; the identification of indirect counterparties; public dissemination of certain illiquid security-based swaps; the requirement for registered SDRs to disseminate the full notional size of all transactions; and the requirement that a registered SDR immediately disseminate information upon receiving a transaction report.

11 See 80 FR at 14741, n. 8.

II. Economic Considerations and Baseline Analysis

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

A. Baseline

To assess the economic impact of the final rules described in this release, the Commission employs as a baseline the security-based swap market as it exists at the time of this release, including applicable rules that the Commission already has adopted but excluding rules that the Commission has proposed but not yet finalized.[12] The analysis includes the statutory and regulatory provisions that currently govern the security-based swap market pursuant to the Dodd-Frank Act, rules adopted in the Intermediary Definitions Adopting Release,[13] the Cross-Border Adopting Release,[14] the SDR Adopting Release,[15] and the U.S. Activity Adopting Release.[16] In addition, the baseline includes rules that have been adopted but for which

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12 The Commission also considered, where appropriate, the impact of rules and technical standards promulgated by other regulators, such as the CFTC and the European Securities and Markets Authority ("ESMA"), on practices in the security-based swap market.

13 See Securities Exchange Act Release No. 66868 (April 27, 2012), 77 FR 30596 (May 23, 2012) ("Intermediary Definitions Adopting Release").

14 See Securities Exchange Act Release No. 72472 (June 25, 2014), 79 FR 47278 (August 12, 2014) ("Cross-Border Adopting Release").

15 See Securities Exchange Act Release No. 74246 (February 11, 2015), 80 FR 14438 (March 19, 2015) ("SDR Adopting Release").

16 See Securities Exchange Act Release No. 77104 (February 10, 2016), 81 FR 8598 (February 19, 2016) ("U.S. Activity Adopting Release").

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

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

1. Available Data Regarding Security-Based Swap Activity

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

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17 See Securities Exchange Act Release No. 75611 (August 5, 2015), 80 FR 48963 (August 14, 2015) ("SBS Entities Registration Adopting Release").

18 See supra note 5.

19 See Securities Exchange Act Release No. 77617 (April 14, 2016), 81 FR 29960 (May 13, 2016) ("External Business Conduct Adopting Release").

20 The Commission also relies on qualitative information regarding market structure and evolving market practices provided by commenters, both in letters and in meetings with Commission staff, and knowledge and expertise of Commission staff.

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

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21 The global notional amount outstanding represents the total face amount of the swap used to calculate payments. The gross market value is the cost of replacing all open contracts at current market prices.

22 See Semi-annual OTC derivatives statistics (December 2015), Table D5, available at http://www.bis.org/statistics/derstats.htm (last viewed May 25, 2016).

23 These totals include both swaps and security-based swaps, as well as products that are excluded from the definition of ''swap,'' such as certain equity forwards.

24 See U.S. Activity Adopting Release, 81 FR at 8601.

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

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

2. Clearing Activity in Single-Name CDS

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[25] The Commission has classified accounts as "U.S. counterparties" based on TIW's entity domicile determinations. The Commission notes, however, that TIW's entity domicile determinations are not necessarily identical in all cases to the definition of "U.S. person" under Exchange Act Rule 3a71-3(a)(4), 17 CFR 240.3a71-3(a)(4).

[26] The challenges the Commission faces in estimating measures of current market activity stems, in part, from the absence of comprehensive reporting requirements for security-based swap market participants. The Commission has adopted rules regarding trade reporting, data elements, and public reporting for security-based swaps that are designed to, when fully implemented, provide us with appropriate measures of market activity. See Regulation SBSR Adopting Release, 80 FR at 14699-700.

[27] See ISDA Letter at 3, 7 (arguing that the Commission lacks complete data to estimate the number of non-U.S. persons that use U.S. personnel to arrange, negotiate, or execute security-based swap transactions or the number of registered U.S. broker-dealers that intermediate these transactions and that this "makes it difficult or impossible for the Commission to formulate a useful estimate of the market impact, cost and benefits of the Proposal"; suggesting that the Commission "gather[] more robust and complete data prior to finalizing a rulemaking that will have meaningful impact on a global market").

Currently, there is no regulatory requirement in the United States to clear security-based swaps. Clearing for certain single-name CDS products occurs on a voluntary basis. Voluntary clearing activity in single-name CDS has steadily increased in recent years. As of the end of 2015, ICE Clear Credit accepted for clearing security-based swap products based on a total of 232 North American corporate reference entities, 174 European corporate reference entities, and 21 individual sovereign reference entities.

Figure 1, below, shows characteristics of new trades in single-name CDS that reference North American standard corporate ISDA documentation. In particular, the figure documents that about half of all clearable transactions are cleared. Analysis of trade activity from January 2011 to December 2015 indicates that, out of $3,460 billion of notional amount traded in North American corporate single-name CDS products that are accepted for clearing during the 60 months ending December 2015, approximately 70%, or $2,422 billion, had characteristics making them suitable for clearing by ICE Clear Credit and represented trades between two ICE Clear Credit clearing members. Approximately 80% of this notional value, or $1,938 billion, was cleared through ICE Clear Credit, or 56% of the total volume of new trade activity. As of the end of 2015, ICE Clear Europe accepted for clearing single-name CDS products referencing a total of 176 European corporate reference entities and seven sovereign reference entities. Analysis of new trade activity from January 2011 to December 2015 indicates that, out of €1,963 billion of notional volume traded in European corporate single-name CDS products that are accepted for clearing during the 60 months ending December 2015, approximately 58%, or €1,139 billion, had characteristics making them suitable for clearing by ICE Clear Europe and represented trades between two ICE Clear Europe clearing members. Approximately 71% of

this notional amount, or €805 billion, was cleared through ICE Clear Europe, or 41% of the total volume of new trade activity.[28]

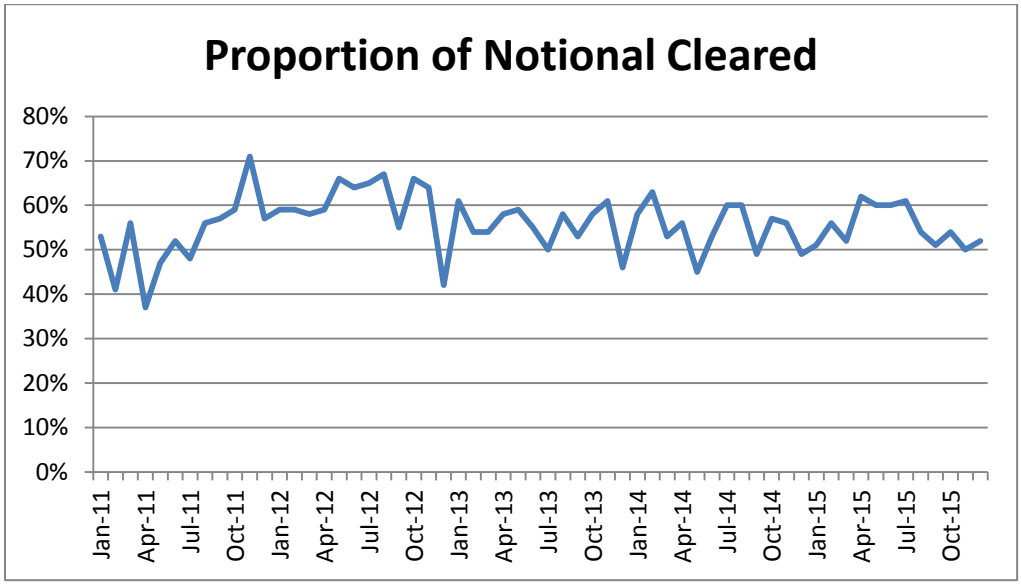

Figure 1: The fraction of total gross notional amount of new trades and assign-entries in North American single-name CDS products that were accepted for clearing by ICE Clear Credit and were cleared within 14 days of the initial transaction.[29]

3. Current Market Structure for Security-Based Swap Infrastructure

a. Exchanges and SB SEFs

The rules and amendments adopted herein address how transactions conducted on platforms (i.e., national securities exchanges and SB SEFs) must be reported under Regulation SBSR. Currently, there are no SB SEFs registered with the Commission, and as a result, there is

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

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

no registered SB SEF trading activity to report. There are, however, currently 22 swap execution facilities ("SEFs") that are either temporarily registered with the Commodity Futures Trading Commission ("CFTC") or whose temporary registrations are pending with the CFTC and currently are exempt from registration with the Commission.[30] As the Commission noted in the U.S. Activity Adopting Release, the cash flows of security-based swaps and other swaps are closely related and many participants in the swap market also participate in the security-based swap market.[31] Likewise, the Commission believes that it is possible that some entities that currently act as SEFs will register with the Commission as SB SEFs. The Commission anticipates that, owing to the smaller size of the security-based swap market, there will be fewer platforms for executing transactions in security-based swaps than the 22 SEFs reported within the CFTC's jurisdiction. Under newly adopted Rule 901(a)(1), a platform is required to report to a registered SDR any security-based swap transaction that is executed on the platform and submitted to clearing.

b. Clearing Agencies

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30 See Securities Exchange Act Release No. 64678 (June 15, 2011), 76 FR 36287, at 36306 (June 22, 2011) (Temporary Exemptions and Other Temporary Relief, Together With Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps) ("Effective Date Release") (exempting persons that operate a facility for the trading or processing of security-based swaps that is not currently registered as a national securities exchange or that cannot yet register as an SB SEF because final rules for such registration have not yet been adopted from the requirements of Section 3D(a)(1) of the Exchange Act until the earliest compliance date set forth in any of the final rules regarding registration of SB SEFs). A list of SEFs that are either temporarily registered with the CFTC or whose temporary registrations are pending with the CFTC is available at http://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=SwapExecutionFacilities (last visited May 25, 2016).

31 See 81 FR at 8609.

The market for clearing services in the security-based swap market is currently concentrated among a handful of firms. **Table 1** lists the firms that currently clear index and single-name CDS and identifies the segments of the market each firm serves. While there may be several choices available to participants interested in cleared index CDS transactions, only two firms (albeit with the same parent) clear sovereign single-name CDS and only a single firm serves the market for North American single-name CDS. Concentration of clearing services within a limited set of clearing agencies can be explained, in part, by the existence of strong economies of scale in central clearing.[32]

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

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[32] See Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR at 66265 (November 2, 2012) (noting that economies of scale can result in natural monopolies). See also Craig Pirrong, "The Industrial Organization of Execution, Clearing and Settlement in Financial Markets," Working Paper (2007), available at http://www.bauer.uh.edu/spirrong/Clearing_silos.pdf (last visited May 25, 2016) (discussing the presence of economies of scale in central clearing).

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

	North American	European	Japanese	Sovereign	Index
ICE Clear Credit[33]	X	X		X	X
ICE Clear Europe[34]		X		X	X
CME[35]					X
LCH.Clearnet[36]		X			X
JSCC[37]			X		X

c. Trade Repositories

The market for data services has evolved along similar lines. While there is currently no mandatory reporting requirement for the single-name CDS market, virtually all transactions are voluntarily reported to TIW, which maintains a legal record of transactions.[38] That there currently is a single dominant provider of recordkeeping services for security-based swaps is consistent with the presence of a natural monopoly for a service that involves a predominantly fixed cost investment with low marginal costs of operation.

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

34 A current list of single-name and index CDS cleared by ICE Clear Europe is available at: https://www.theice.com/publicdocs/clear_europe/ICE_Clear_Europe_Cleared_Products_List.xlsx (last visited on May 25, 2016).

35 A current list of CDS cleared by CME is available at: http://www.cmegroup.com/trading/cds/files/cleared-cds-product-specs.xls (last visited May 25, 2016).

36 A current list of single-name and index CDS cleared by LCH.Clearnet is available at: http://www.lchclearnet.com/documents/731485/762470/cdsclear_product_list_oct_2015_.xlsx/20b23881-9973-4671-8e78-ee4cfc04b693 (last visited May 25, 2016).

37 A current list of single-name and index CDS cleared by the Japanese Securities Clearing Corporation is available at: http://www.jscc.co.jp/en/data/en/2015/05/Settlement_Prices.pdf (last visited May 25, 2016).

38 See http://www.dtcc.com/derivatives-services/trade-information-warehouse (last visited May 25, 2016) (describing the function and coverage of TIW).

There are currently no SDRs registered with the Commission.[39] Registration requirements are part of the new rules discussed in the SDR Adopting Release.[40] In the absence of SEC-registered SDRs, the analysis of the economic effects of the adopted rules and amendments discussed in this release on SDRs is informed by the experience of the CFTC-registered swap data repositories that operate in the swap market. The CFTC has provisionally registered four swap data repositories to accept transactions in swap credit derivatives.[41]

It is reasonable to estimate that a similar number of persons provisionally registered with the CFTC to service the equity and credit swap markets might seek to register with the Commission as SDRs, and that other persons could seek to register with both the CFTC and the Commission as swap data repositories and SDRs, respectively. There are economic incentives for the dual registration attributed to the fact that many of the market participants in the security-based swap market also participate in the swap market. Moreover, once a swap data repository is registered with the CFTC and the required infrastructure for regulatory reporting and public dissemination is in place, the marginal costs for a swap data repository to also register with the Commission as an SDR, adding products and databases and implementing modifications to account for differences between Commission and CFTC rules, will likely be lower than the initial cost of registration with the CFTC.

d. Vertical Integration of Security-Based Swap Market Infrastructure

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39 ICE Trade Vault, LLC, and DTCC Data Repository (U.S.) LLC ("DDR") each have filed an application with the Commission to register as an SDR. See Securities Exchange Act Release No. 77699 (April 22, 2016), 81 FR 25475 (April 28, 2016) (ICE Trade Vault); Securities Exchange Act Release No. 78216 (June 30, 2016), 81 FR at 44379 (July 7, 2016).

40 See 80 FR at 14457-69.

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

The Commission has already observed vertical integration of swap market infrastructure: clearing agencies have entered the market for record keeping services for swaps by provisionally registering themselves, or their affiliates, as swap data repositories with the CFTC. Under the CFTC swap reporting regime, two provisionally registered swap data repositories are, or are affiliated with, clearing agencies that clear swaps. These clearing agencies have adopted rules providing that they will satisfy their CFTC swap reporting obligations by reporting to their own, or their affiliated, swap data repository.[42] As a result, beta and gamma transactions and subsequent netting transactions that arise from the clearing process are reported by each of these clearing agencies to their associated swap data repositories.

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

a. Market Centers

Financial groups engaged in security-based swap dealing activity operate in multiple market centers and carry out such activity with counterparties around the world.[43] Several commenters noted that many market participants that engage in dealing activity prefer to use traders and manage risk for security-based swaps in the jurisdiction where the underlier is traded.[44] Thus, although a significant amount of the dealing activity in security-based swaps on U.S. reference entities involves non-U.S. dealers, the Commission understands that these dealers tend to carry out much of the security-based swap trading and related risk-management activities

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

43 See U.S. Activity Adopting Release, 81 FR at 8603-604.

44 See IIB Letter at 2; SIFMA/FSR Letter at 6; ISDA I at 5; MFA/AIMA Letter at 7, n. 34.

in these security-based swaps within the United States.[45] Some dealers have explained that being able to centralize their trading, sales, risk management, and other activities related to U.S. reference entities in U.S. operations (even when the resulting transaction is booked in a foreign entity) improves the efficiency of their dealing business.[46]

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

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

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

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45 See IIB Letter at 2; SIFMA/FSR Letter at 6; ISDA Letter at 5.

46 See id.

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

A financial group may choose to book all of its security-based swap transactions, regardless of where the transaction originated, in a single, central booking entity. That entity generally retains the risk associated with that transaction, but it also may lay off that risk to another affiliate via a back-to-back transaction or an assignment of the security-based swap.[47] Alternatively, a financial group may book security-based swaps arising from its dealing business in separate affiliates, which may be located in the jurisdiction where it originates the risk associated with those security-based swaps, or alternatively, the jurisdiction where it manages that risk.[48] Some financial groups may book transactions originating in a particular region to an affiliate established in a jurisdiction located in that region.[49]

Regardless of where a financial group determines to book its security-based swaps arising out of its dealing activity, it is likely to operate offices that perform sales or trading functions in one or more market centers in other jurisdictions. Maintaining sales and trading desks in global market centers permits the financial group to deal with counterparties in that jurisdiction or in a specific geographic region, or to ensure that it is able to provide liquidity to counterparties in

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47 See U.S. Activity Adopting Release, 81 FR at 8604.

48 See id.

49 There is some indication that this booking structure is becoming increasingly common in the market. See, e.g., "Regional swaps booking replacing global hubs," Risk.net (Sept. 4, 2015), available at: http://www.risk.net/risk-magazine/feature/2423975/regional-swaps-booking-replacing-global-hubs.

other jurisdictions, for example, when a counterparty's home financial markets are closed.[50] A financial group engaged in security-based swap dealing business also may choose to manage its trading book in particular reference entities or securities primarily from a trading desk that can take advantage of local expertise in such products or that can gain access to better liquidity, which may permit it to more efficiently price such products or to otherwise compete more effectively in the security-based swap market.[51] Some financial groups prefer to centralize risk management, pricing, and hedging for specific products with the personnel responsible for carrying out the trading of such products to mitigate operational risk associated with transactions in those products.

The financial group affiliate that books these transactions may carry out related market-facing activities, whether in its home jurisdiction or in a foreign jurisdiction, using either its own personnel or the personnel of an affiliated or unaffiliated agent. For example, the financial group may determine that another affiliate in the financial group employs personnel who possess expertise in relevant products or who have established sales relationships with key counterparties in a foreign jurisdiction, making it more efficient to use the personnel of the affiliate to engage in security-based swap dealing activity on its behalf in that jurisdiction.[52] In these cases, the affiliate that books these transactions and its affiliated agent may operate as an integrated dealing business, each performing distinct core functions in carrying out that business.

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50 These offices may be branches or offices of the booking entity itself, or branches or offices of an affiliated agent, such as, in the United States, a registered broker-dealer. See U.S. Activity Adopting Release, 81 FR at 8604-605.

51 See id. at 8605.

52 See id.

Alternatively, the financial group affiliate that books these transactions may in some circumstances determine to engage the services of an unaffiliated agent through which it can engage in dealing activity. For example, a financial group may determine that using an interdealer broker may provide an efficient means of participating in the interdealer market in its own, or in another, jurisdiction, particularly if it is seeking to do so anonymously or to take a position in products that trade relatively infrequently.[53] A financial group may also use unaffiliated agents that operate at its direction. Such an arrangement may be particularly valuable in enabling a financial group to service clients or access liquidity in jurisdictions in which it has no security-based swap operations of its own.

The Commission understands that financial group affiliates (whether affiliated with U.S.-based financial groups or not) that are established in foreign jurisdictions may use any of these structures to engage in dealing activity in the United States, and that they may seek to engage in dealing activity in the United States to transact with both U.S.-person and non-U.S.-person counterparties. In transactions with non-U.S.-person counterparties, these foreign affiliates may affirmatively seek to engage in dealing activity in the United States because the sales personnel of the non-U.S.-person dealer (or of its agent) in the United States have existing relationships with counterparties in other locations (such as Canada or Latin America) or because the trading personnel of the non-U.S. person dealer (or of its agent) in the United States have the expertise to manage the trading books for security-based swaps on U.S. reference securities or entities. The Commission understands that some of these foreign affiliates engage in dealing activity in the

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[53] The Commission understands that inter-dealer brokers may provide voice or electronic trading services that, among other things, permit dealers to take positions or hedge risks in a manner that preserves their anonymity until the trade is executed. These inter-dealer brokers also may play a particularly important role in facilitating transactions in less-liquid security-based swaps.

United States through their personnel (or personnel of their affiliates) in part to ensure that they are able to provide their own counterparties, or those of financial group affiliates in other jurisdictions, with access to liquidity (often in non-U.S. reference entities) during U.S. business hours, permitting them to meet client demand even when the home markets are closed. In some cases, such as when seeking to transact with other dealers through an interdealer broker, these foreign affiliates may act, in a dealing capacity, in the United States through an unaffiliated, third-party agent.

c. Current Estimates of Number of Security-Based Swap Dealers

Security-based swap activity is concentrated in a relatively small number of dealers, which already represent a small percentage of all market participants active in the security-based swap market.[54] Based on an analysis of 2015 data, the Commission's earlier estimates of the number of entities likely to register as security-based swap dealers remain largely unchanged.[55] Of the approximately 50 entities that the Commission estimates might register as security-based swap dealers, the Commission believes that it is reasonable to expect 22 to be non-U.S. persons.[56] Under the rules as they currently exist, the Commission identified approximately 170 entities engaged in single-name CDS activity, with all counterparties, of $2 billion or more. Of those entities, 104 are expected to incur assessment costs to determine whether they meet the

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54 See U.S. Activity Adopting Release, 81 FR at 8605.

55 See id.

56 These estimates are based on the number of accounts in TIW data with total notional volume in excess of de minimis thresholds, increased by a factor of two, to account for any potential growth in the security-based swap market, to account for the fact that the Commission is limited in observing transaction records for activity between non-U.S. persons that reference U.S. underliers, and to account for the fact that the Commission does not observe security-based swap transactions other than in single-name CDS. See U.S. Activity Adopting Release, 81 FR at 8605.

definition of "security-based swap dealer." Approximately 47 of these entities are non-U.S. persons.[57]

Many of these dealers are already subject to other regulatory frameworks under U.S. law based on their role as intermediaries or on the volume of their positions in other products, such as swaps. Available data support the Commission's prior estimates, based on the Commission's experience and understanding of the swap and security-based swap market, that, of the 55 firms that might register as security-based swap dealers or major security-based swap participants, approximately 35 would also be registered with the CFTC as swap dealers or major swap participants.[58] Based on an analysis of TIW data and filings with the Commission, the Commission estimates that 16 market participants that will register as security-based swap dealers have already registered with the Commission as broker-dealers and are thus subject to Exchange Act and Financial Industry Regulatory Authority ("FINRA") requirements applicable to such entities. Finally, as the Commission discusses below, some dealers may be subject to similar requirements in one or more foreign jurisdictions.[59]

Finally, the Commission also notes that it has adopted rules for the registration of security-based swap dealers and major security-based swap participants, although market participants are not yet required to comply with those rules.[60] Thus, there are not yet any

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57 See id.

58 See id.

59 See id. at 8605-606.

60 In the SBS Entity Registration Adopting Release, the Commission established the compliance date for security-based swap dealer and major security-based swap participant registration (the "SBS entities registration compliance date") as the later of six months after the date of publication in the Federal Register of a final rule release adopting rules establishing capital, margin and segregation requirements for SBS entities; the compliance date of final rules establishing recordkeeping and reporting requirements

security-based swap dealers or major security-based swap participants registered with the Commission.

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

Under rules recently adopted by the Commission as part of the U.S. Activity Adopting Release, non-U.S. persons will be required to apply transactions with other non-U.S. persons in connection with their dealing activity towards their de minimis thresholds when those transactions are arranged, negotiated, or executed by personnel located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office.[61] As a result of this requirement, certain market participants will likely incur costs associated with determining the location of relevant personnel who arrange, negotiate, or execute a transaction,[62] and, having determined the locations, these market participants will be able to identify those transactions that are arranged, negotiated, or executed by personnel located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office. The Commission estimated that an additional 20 non-U.S. persons, beyond the 56 identified under the Cross-Border Adopting Release, were likely to incur assessment costs in connection with the de minimis exception as a result of these rules.[63]

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for SBS entities; the compliance date of final rules establishing business conduct requirements under Exchange Act Sections 15F(h) and 15F(k); or the compliance date for final rules establishing a process for a registered SBS entities to make an application to the Commission to allow an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on the SBS entities' behalf. See 80 FR at 48964.

61 See Rule 3a71-3(C) under the Exchange Act, 17 CFR 240.3a71-3(C).

62 See U.S. Activity Adopting Release, 81 FR at 8627-28.

63 See id. at 8627.

To estimate the number of unregistered foreign entities that arrange, negotiate, or execute security-based swap transactions using U.S. personnel in connection with their dealing activity for the purpose of this rulemaking, Commission staff used 2015 TIW single-name CDS transaction data to identify foreign entities that have three or more counterparties that are not recognized as dealers by ISDA and that traded less than $3 billion in notional volume and identified four entities that met these criteria. In 2015, these four entities were counterparties to 1,080 transactions in single-name CDS, referencing 186 reference entities, with a total notional volume of $5.2 billion. The Commission believes that these foreign dealing entities that are likely to remain unregistered engage in transactions in essentially the same products as foreign dealing entities that are likely to register as security-based swap dealers. The Commission staff observed in the 2015 data that foreign dealing entities that are likely to register as security-based swap dealers based on single-name CDS transaction activity in 2015 traded in 185 out of the 186 reference entities that the smaller foreign dealing entities had traded in.

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

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

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

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

These dealers transact with hundreds or thousands of counterparties. Approximately 24% of accounts of firms expected to register as security-based dealers and observable in TIW have entered into security-based swaps with over 1,000 unique counterparty accounts as of year-end 2015.[66] Another 24% of these accounts transacted with 500 to 1,000 unique counterparty accounts; 16% transacted with 100 to 500 unique accounts; and 36% of these accounts intermediated swaps with fewer than 100 unique counterparties in 2015. The median dealer account transacted with 481 unique accounts (with an average of approximately 635 unique accounts). Non-dealer counterparties transacted almost exclusively with these dealers. The median non-dealer counterparty transacted with three dealer accounts (with an average of approximately four dealer accounts) in 2015.

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[65] The Commission staff analysis of TIW transaction records indicates that approximately 99% of single-name CDS price-forming transactions in 2015 involved an ISDA-recognized dealer.

[66] Many dealer entities and financial groups transact through numerous accounts. Given that individual accounts may transact with hundreds of counterparties, the Commission may infer that entities and financial groups may transact with at least as many counterparties as the largest of their accounts.

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

Figure 2 also shows that the portion of the notional volume of North American corporate single-name CDS represented by interdealer transactions has remained fairly constant and that interdealer transactions continue to represent a significant majority of trading activity, even as notional volume has declined over the past seven years,[67] from more than $6 trillion in 2008 to less than $1.3 trillion in 2015.[68]

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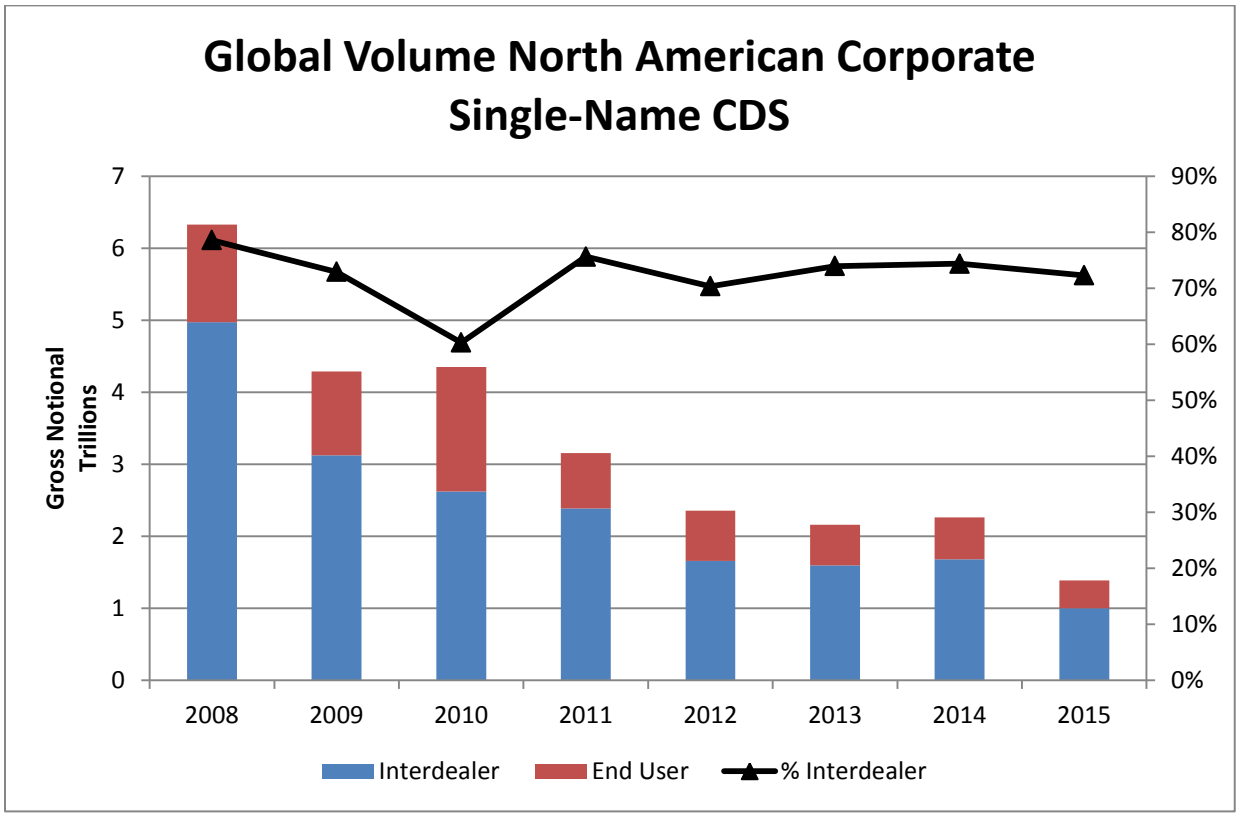
67 The start of this decline predates the enactment of the Dodd-Frank Act and the proposal of rules thereunder, which is important to note for the purpose of understanding the economic baseline for this rulemaking.

68 This estimate is lower than the gross notional amount of $5.8 trillion noted above as it includes only the subset of single-name CDS referencing North American corporate documentation. See supra note 65.

Figure 2: Global, notional trading volume in North American corporate single-name CDS by calendar year and the fraction of volume that is interdealer.



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

Against this backdrop of declining North American corporate single-name CDS activity, about half of the trading activity in North American corporate single-name CDS reflected in the set of data that the Commission analyzed was between counterparties domiciled in the United States and counterparties domiciled abroad, as shown in Figure 3 below. Using the self-reported registered office location of the TIW accounts as a proxy for domicile, the Commission estimates that only 12% of the global transaction volume by notional volume between 2008 and 2015 was

between two U.S.-domiciled counterparties, compared to 48% entered into between one U.S.-domiciled counterparty and a foreign-domiciled counterparty and 40% entered into between two foreign-domiciled counterparties.[69]

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

Financial groups based in the United States are also involved in a majority of interdealer transactions in North American corporate single-name CDS. Of transactions on North American corporate single-name CDS between two ISDA-recognized dealers and their branches or

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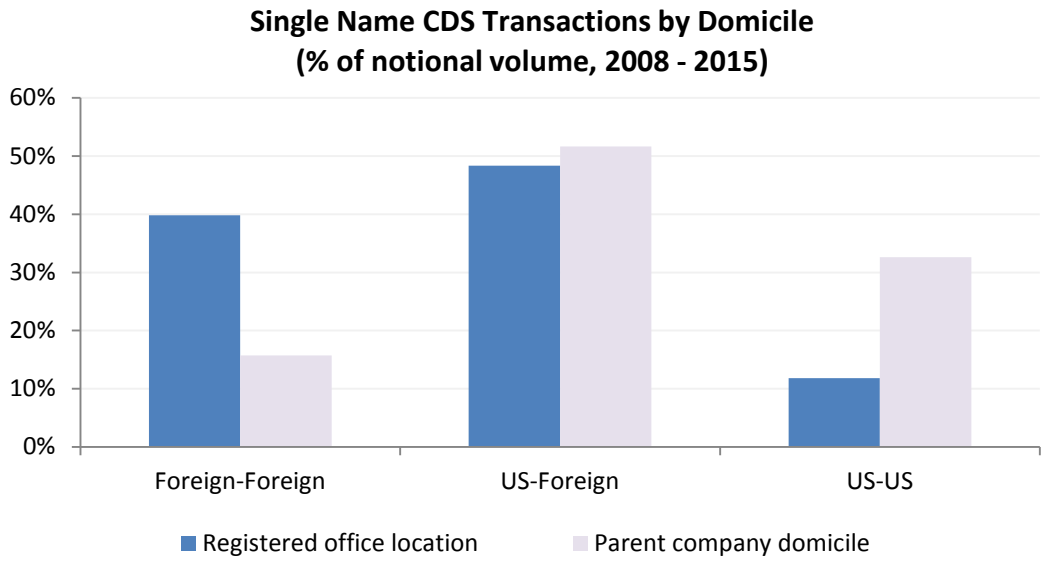
[69] For purposes of this discussion, the Commission has assumed that the registered office location reflects the place of domicile for the fund or account, but the Commission notes that this domicile does not necessarily correspond to the location of an entity's sales or trading desk. See U.S. Activity Adopting Release, 81 FR at 8607, n. 83.

affiliates, 93% of transaction notional volume involved at least one account of an entity with a U.S. parent.

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

Figure 3: The fraction of notional volume in North American corporate single-name CDS between (1) two U.S.-domiciled accounts; (2) one U.S.-domiciled account and one non-U.S.-domiciled account; and (3) two non-U.S.-domiciled accounts, computed from January 2008 through December 2015.



6. Global Regulatory Efforts

In 2009, the G20 Leaders—whose membership includes the United States, 18 other countries, and the European Union—addressed global improvements in the OTC derivatives markets. They expressed their view on a variety of issues relating to OTC derivatives contracts.

In subsequent summits, the G20 Leaders have returned to OTC derivatives regulatory reform and encouraged international consultation in developing standards for these markets.[70]

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

Foreign jurisdictions have been actively implementing regulations of the OTC derivatives markets. Regulatory transaction reporting requirements are in force in a number of jurisdictions, including the European Union, Hong Kong SAR, Japan, Australia, Brazil, Canada, China, India, Indonesia, South Korea, Mexico, Russia, Saudi Arabia, and Singapore; other jurisdictions are in the process of proposing legislation and rules to implement these requirements.[71] The CFTC, the 13 Canadian provinces and territories, the European Union, and Japan have adopted

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70 See, e.g., G20 Leaders' Final Declaration (November 2011), paragraph 24, available at: http://www.g20.utoronto.ca/2011/2011-cannes-declaration-111104-en.html (last visited on May 25, 2016).

71 See Financial Stability Board, OTC Derivatives Market Reforms Tenth Progress Report on Implementation (November 2015), available at http://www.fsb.org/wp-content/uploads/OTC-Derivatives-10th-Progress-Report.pdf (last visited on May 25, 2016). The Financial Stability Board's report on a peer review of trade reporting confirmed that most Financial Stability Board member jurisdictions have trade reporting requirements in place. See Financial Stability Board, Thematic Review on OTC Derivatives Trade Reporting (November 2015), available at http://www.fsb.org/wp-content/uploads/Peer-review-on-trade-reporting.pdf (last visited on May 25, 2016).

requirements to publicly disseminate transaction-level data about OTC derivatives transactions. In addition, a number of foreign jurisdictions have initiated the process of implementing margin and other risk mitigation requirements for non-centrally cleared OTC derivatives transactions.[72] Several jurisdictions have also taken steps to implement the Basel III recommendations governing capital requirements for financial entities, which include enhanced capital charges for non-centrally cleared OTC derivatives transactions.[73] There has been limited progress in moving OTC derivatives onto organized trading platforms among G20 countries. The CFTC mandated the trading of certain interest rate swaps and index CDS on CFTC-regulated SEFs in 2014. Japan implemented a similar requirement for a subset of Yen-denominated interest rate swaps in September 2015. The European Union has adopted legislation that addresses trading OTC derivatives on regulated trading platforms, but has not mandated specific OTC derivatives to trade on these platforms. This legislation also should promote post-trade public transparency in

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

73 In November 2015, the Financial Stability Board reported that 18 member jurisdictions participating in its tenth progress report on OTC derivatives market reforms had in force standards or requirements covering more than 90% of transactions that require enhanced capital charges for non-centrally cleared transactions. A further three member jurisdictions had a legislative framework or other authority in force and had adopted implementing standards or requirements that were not yet in force. An additional three member jurisdictions had a legislative framework or other authority in force or published for consultation or proposal. See Financial Stability Board, OTC Derivatives Market Reforms Tenth Progress Report on Implementation (November 2015), available at http://www.financialstabilityboard.org/wp-content/uploads/OTC-Derivatives-10th-Progress-Report.pdf (last visited on May 25, 2016).

OTC derivatives markets by requiring the price, volume, and time of derivatives transactions conducted on these regulated trading platforms to be made public in as close to real time as technically possible.[74]

B. Economic Considerations

In the Regulation SBSR Adopting Release, the Commission highlighted certain overarching effects on the security-based swap market that it believes will result from the adoption of Regulation SBSR. These benefits could include, generally, improved market quality, improved risk management, greater efficiency, and improved oversight by the Commission and other relevant authorities.[75] Regulation SBSR requires market participants to make infrastructure investments in order to report security-based swap transactions to registered SDRs, and for SDRs to make infrastructure investments to receive and store that transaction data and to publicly disseminate transaction data in a manner required by Rule 902 of Regulation SBSR.

The amendments to Regulation SBSR being adopted today will, among other things, impose certain requirements on the platforms,[76] registered clearing agencies, and registered SDRs that constitute infrastructure for the security-based swap market and provide services to counterparties who participate in security-based swap transactions. The adopted amendments and the guidance provided will affect the manner in which these infrastructure providers compete with one another and exercise market power over security-based swap counterparties. In turn,

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74 See Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) no 648/2012), available at: http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0600&from=EN (last visited on May 25, 2016).

75 See Regulation SBSR Adopting Release, 80 FR at 14699-705.

76 A platform is a national securities exchange or security-based swap execution facility that is registered or exempt from registration. See Rule 900(v), 17 CFR 242.900(v).

there will be implications for the security-based swap counterparties who utilize these infrastructure providers and the security-based swap market generally.

In addition, the Commission is adopting regulatory reporting and public dissemination requirements under Regulation SBSR for certain types of cross-border security-based swaps not currently addressed in Regulation SBSR. Subjecting additional types of security-based swaps to regulatory reporting and public dissemination will affect the overall costs and benefits associated with Regulation SBSR and have implications for transparency, competition, and liquidity provision in the security-based swap market.

1. Security-Based Swap Market Infrastructure

Title VII requires the Commission to create a new regulatory regime for the security-based swap market that, among other things, includes trade execution, central clearing, and reporting requirements aimed at increasing transparency and customer protection as well as mitigating the risk of financial contagion.[77] These new requirements, once implemented, might require market participants, who may have previously engaged in bilateral transaction activity without any need to engage third-party service providers, to interface with platforms, registered clearing agencies, and registered SDRs.

As a general matter, rules that require regulated parties to obtain services can have a material impact on the prices of those services in the absence of a competitive market for those services. In particular, if service providers are monopolists or otherwise have market power, requiring market participants to obtain their services can potentially allow the service providers

[77] See Cross-Border Adopting Release, 79 FR at 47285.

to increase the profits that they earn from providing the required services.[78] Because Title VII requires the Commission to implement rules requiring market participants to use the services provided by platforms,[79] registered clearing agencies,[80] and registered SDRs,[81] these requirements could reduce the sensitivity of demand to changes in prices or quality of the services of firms that create and develop security-based swap market infrastructure. As such, should security-based swap infrastructure providers–such as platforms, registered clearing agencies, and registered SDRs–enjoy market power, they might be able to change their prices or service quality without a significant effect on demand for their services. In turn, these changes in prices or quality could have negative effects on activity in the security-based swap market.

As discussed in Section XIII, infra, the amendments to Regulation SBSR being adopted today could have an impact on the level of competition among suppliers of trade reporting services and affect the relative bargaining power of suppliers and consumers in determining the prices of those services. In particular, when the supply of trade reporting services is concentrated among a small number of firms, consumers of these services have few alternative suppliers from which to choose. Such an outcome could limit the incentives to produce more efficient trade reporting processes and services and could, in certain circumstances, result in less security-based swap transaction activity than would otherwise be optimal. In the case of security-based swap transaction activity, welfare losses could result from higher costs to counterparties for hedging financial or commercial risks.

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78 These effects, as they relate specifically to the rules and amendments, as well as alternative approaches, are discussed in Section XIII, infra.

79 See 15 U.S.C. 78c-3(h)(1).

80 See 15 U.S.C. 78c-3(a)(1).

81 See 15 U.S.C. 78m(m)(1)(G).

2. Competition Among Security-Based Swap Infrastructure Providers

As noted above, the Commission recognizes how regulatory requirements may affect the demand for services provided by platforms, registered clearing agencies, and SDRs, and, in turn, the ability of these entities to exercise their market power. The Commission's economic analysis of the amendments adopted today considers how the competitive landscape for platforms, registered clearing agencies, and registered SDRs might affect the market power of these entities and hence the level and allocation of costs related to regulatory requirements. Some of the factors that may influence this competitive landscape have to do with the nature of trade reporting and are unrelated to regulation, while others may be a result of, or influenced by, the rules that the Commission is adopting in this release. To the extent that the adopted rules inhibit competition among infrastructure providers, they could result in fees charged to counterparties that deviate from the underlying costs of providing services.

As a general matter, trade execution, clearing, and reporting services are likely to be concentrated among a small number of providers. For example, SDRs and clearing agencies must make significant infrastructure and human capital investments to enter their respective markets, but once these start-up costs are incurred, the addition of data management by SDRs or transaction clearing services by clearing agencies is likely to occur at low marginal costs. As a result, the per-transaction cost to provide infrastructure services quickly falls for SDRs and clearing agencies as their customer base grows, because they are able to amortize the fixed costs associated with serving counterparties over a larger number of transactions. These economies of scale would be expected to favor incumbent service providers who can leverage their market position to discourage entry by potential new competitors that face significant fixed costs to enter the market. As a result, the markets for clearing services and SDR services are likely to be

dominated by a small number of firms that each have large market share, which is borne out in the current security-based swap market.[82]

Competition among registered clearing agencies and registered SDRs could also be influenced by the fact that security-based swap market participants incur up-front costs for each connection that they establish with an SDR or clearing agency. If these costs are sufficiently high, an SDR or clearing agency could establish itself as an industry leader by ''locking-in'' customers who are unwilling or unable to make a similar investment for establishing a connection with a competitor.[83] An SDR or clearing agency attempting to enter the market or increase market share would have to provide services valuable enough, or set fees low enough, to offset the costs of switching from a competitor. In this way, costs to security-based swap market participants of interfacing with market infrastructure could serve as a barrier to entry for firms that would like to provide market infrastructure services provided by SDRs and clearing agencies.

The rules adopted today might also influence the competitive landscape for firms that provide security-based swap market infrastructure. Fundamentally, requiring the reporting of

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82 See supra Section II(A).

83 See Joseph Farrell and Paul Klemperer, "Coordination and Lock-in: Competition with Switching Costs and Network Effects," in Handbook of Industrial Organization, Mark Armstrong and Robert Porter (ed.) (2007), at 1972. The authors describe how switching costs affect entry, noting that, on one hand, "switching costs hamper forms of entry that must persuade customers to pay those costs" while, on the other hand, if incumbents must set a single price for both new and old customers, a large incumbent might focus on harvesting its existing customer base, ceding new customers to the entrant. In this case, a competitive market outcome would be characterized by prices for services that equal the marginal costs associated with providing services to market participants. This is because, in a competitive market with free entry and exit of firms, a firm that charges a price that is higher than marginal cost would lose sales to existing firms or entrants that are willing to provide the same service at a lower price. Such price competition prevents firms from charging prices that are above marginal costs.

security-based swap transactions to SDRs creates an inelastic demand for reporting services that would not be present if not for regulation. This necessarily reduces a counterparty's ability to bargain with infrastructure service providers over price or service because the option of not reporting is unavailable. Moreover, infrastructure requirements imposed by Title VII regulation will increase the fixed costs of an SDR operating in the security-based swap market and increase the barriers to entry into the market, potentially discouraging firms from entering the market for SDR services. For example, under Rule 907, as adopted, registered SDRs are required to establish and maintain certain written policies and procedures. The Commission estimated that this requirement will impose initial costs on each registered SDR of approximately $12,250,000.[84]

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

As discussed in more detail in Section XIII(A), infra, while adopting a reporting methodology that assigns reporting responsibilities to registered clearing agencies, which will hold the most complete and accurate information for cleared transactions, could minimize potential data discrepancies and errors, rules that give registered clearing agencies discretion

[84] See Regulation SBSR Adopting Release, 80 FR at 14718, n. 1343.

over where to report transaction data could provide incentives for registered clearing agencies to create affiliate SDRs and compete with other registered SDRs for post-trade reporting services. The cost to a clearing agency of entering the market for SDR services is likely to be low, given that many of the infrastructure requirements for entrant SDRs are shared by clearing agencies. Clearing agencies already have the infrastructure necessary for capturing transaction records from clearing members and might be able to leverage that preexisting infrastructure to provide services as an SDR at lower incremental cost than other new SDRs. Because all clearing transactions, like all other security-based swaps, must be reported to a registered SDR, there would be a set of potentially captive transactions that clearing agencies could initially use to vertically integrate into SDR services.[85]

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

However, the Commission recognizes that the entry of clearing-agency-affiliated SDRs might not necessarily result in increased competition among SDRs or result in lower costs for

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

SDR services. In an environment where registered clearing agencies with affiliated SDRs have discretion to send their clearing transaction data to their affiliates, security-based swap market participants who wish to submit their transactions to clearing may have reduced ability to direct the reporting of the clearing transaction to an independent SDR. As a result, clearing-agency-affiliated SDRs would not directly compete with independent SDRs on the basis of price or quality, because they inherit their clearing agency affiliate's market share. This might allow clearing agency incumbents to exercise market power through their affiliated SDRs relative to independent SDRs.

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

Several broad economic considerations have informed the Commission's approach to identifying transactions between two non-U.S. persons that should be subject to certain Title VII requirements. The Commission has taken into account the potential impact that rules already adopted as part of the Regulation SBSR Adopting Release might have on competition between U.S. persons and non-U.S. persons when they engage in security-based swap transactions with non-U.S. persons, along with the implications of these competitive frictions for the ability of market participants to obtain liquidity in a market that is predominantly over-the-counter. In particular, competitive disparities could arise between U.S. dealing entities and foreign dealing entities[86] using personnel located in a U.S. branch or office when serving unregistered non-U.S. counterparties. In the absence of the rules adopted today, U.S. dealing entities and their agents

[86] Throughout this release, a "dealing entity" refers to an entity that engages in security-based swap dealing activity regardless of whether the volume of such activity exceeds the de minimis threshold established by the Commission that would cause the entity to be a "security-based swap dealer" and thus require the entity to register with the Commission as a security-based swap dealer.

would bear the costs associated with regulatory reporting and public dissemination requirements when trading with unregistered non-U.S. counterparties, while foreign dealing entities that use U.S.-based personnel to trade with the same unregistered non-U.S. counterparties would not bear such regulatory costs if these foreign dealing entities are not subject to comparable regulatory requirements in their home jurisdictions. Thus, these foreign dealing entities could offer liquidity at a lower cost to unregistered non-U.S. persons thereby gaining a competitive advantage over U.S. dealing entities.

Competitive disparities could also arise between U.S. persons and non-U.S. persons that trade with foreign dealing entities that use U.S. personnel to arrange, negotiate, or execute security-based swap transactions.[87] A transaction between an unregistered U.S. person and a foreign dealing entity that uses U.S. personnel to arrange, negotiate, or execute the transaction is subject to regulatory reporting and public dissemination under existing Rule 908(a)(1)(i). In the absence of newly adopted Rule 908(a)(1)(v), a transaction between an unregistered non-U.S. person and the foreign dealing entity engaging in ANE activity would not be subject to Regulation SBSR. This could create a competitive advantage for unregistered non-U.S. persons over similarly situated U.S. persons when unregistered non-U.S. persons trade with foreign dealing entities that engage in ANE activity. Such a foreign dealing entity might be able to offer

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87 Throughout this release, a security-based swap transaction involving a non-U.S.-person counterparty that, in connection with its dealing activity, has arranged, negotiated, or executed using its personnel located in a U.S. branch or office, or the personnel of its agent located in a U.S. branch or office, is referred to as an "ANE transaction"; the arrangement, negotiation, and/or execution of such a security-based swap by personnel of a non-U.S. person located in a U.S. branch or office, or by the personnel of its agent located in a U.S. branch or office are referred to as "ANE activities" or "engaging in ANE activity"; and the personnel located in the U.S. branch or office of the foreign dealing entity, or (if applicable) the personnel of its agent located in a U.S. branch or office, are referred to as "U.S. personnel."

liquidity to an unregistered non-U.S. person at a lower price than to an unregistered U.S. person, because the foreign dealing entity that is engaging in ANE activity would not have to embed the potential costs of regulatory reporting and public dissemination into the price offered to the unregistered non-U.S. counterparty. By contrast, the price offered by that foreign dealing entity to an unregistered U.S. counterparty likely would reflect these additional costs.

The Commission acknowledges, however, that applying Title VII rules based on the location of personnel who engage in relevant conduct could provide incentives for these foreign dealing entities to restructure their operations to avoid triggering requirements under Regulation SBSR. For example, a foreign dealing entity could restrict its U.S. personnel from intermediating transactions with non-U.S. persons or use agents who are located outside the United States when engaging in security-based swap transactions with non-U.S. persons.

In addition, disparate treatment of transactions depending on whether they are arranged, negotiated, or executed by personnel located in a U.S. branch or office could create fragmentation among agents that may seek to provide services to foreign dealing entities. To the extent that using agents with personnel located in a U.S. branch or office might result in regulatory costs being imposed on foreign dealing entities, such entities might prefer and primarily use agents located outside the United States, while U.S. dealers might continue to use agents located in the United States.

III. Reporting by Registered Clearing Agencies

A. Background

Section 13(m)(1)(F) of the Exchange Act[88] 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[89] 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[90] specifies the party obligated to report a security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization. To implement these statutory provisions, the Commission in February 2015 adopted Rule 901(a) of Regulation SBSR, which designates the persons who must report all security-based swaps except: (1) clearing transactions;[91] (2) security-based swaps that are executed on a platform and that will be submitted to clearing; (3) transactions where there is no U.S. person, registered security-based swap dealer, or registered major security-based swap participant on either side; and (4) transactions where there is no registered security-based swap dealer or registered major security-based swap participant on either side and there is a U.S.

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88 15 U.S.C. 78m(m)(1)(F).

89 15 U.S.C. 78m(m)(1)(G).

90 15 U.S.C. 78m-1(a)(3).

91 Rule 900(g) defines "clearing transaction" as "a security-based swap that has a registered clearing agency as a direct counterparty." This definition describes security-based swaps that arise when a registered clearing agency accepts a security-based swap for clearing as well as security-based swaps that arise as part of a clearing agency's internal processes, including those used to establish prices for cleared products and those resulting from netting other clearing transactions of the same product in the same account into a new open position. See Regulation SBSR Adopting Release, 80 FR at 14599.

person on only one side ("covered transactions"). This section addresses reporting duties for clearing transactions—i.e., the security-based swaps in category (1) above.[92]

1. Clearing Process for Security-Based Swaps

As discussed in the Regulation SBSR Adopting Release and the Regulation SBSR Proposed Amendments Release, two models of clearing—an agency model and a principal model—are currently used in the swap markets.[93] In the agency model, which predominates in the United States, a swap that is submitted to clearing—typically referred to in the industry as an "alpha"—is, if accepted by the clearing agency, terminated and replaced with two new swaps, known as the "beta" and "gamma." One of the direct counterparties[94] to the alpha becomes a direct counterparty to the beta, the other direct counterparty to the alpha becomes a direct counterparty to the gamma, and the clearing agency becomes a direct counterparty to each of the beta and the gamma.[95] This release uses the terms "alpha," "beta," and "gamma" in the same

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92 Security-based swaps in category (2) are discussed in Section IV, infra. Security-based swaps in categories (3) and (4) are discussed in Section IX, infra.

93 See Regulation SBSR Adopting Release, 80 FR at 14599; Regulation SBSR Proposed Amendments Release, 80 FR at 14742-43.

94 Existing Rule 900(k) defines "direct counterparty" as "a person that is a primary obligor on a security-based swap."

95 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

way that the Commission understands they are used in the agency model of clearing in the U.S. swap market. As noted in the Regulation SBSR Adopting Release, an alpha is not a "clearing transaction" under Regulation SBSR, even though it is submitted for clearing, because it does not have a registered clearing agency as a direct counterparty.[96]

2. Proposed Rules and General Summary of Comments

In the Regulation SBSR Proposed Amendments Release, the Commission proposed a new subparagraph (2)(i) of existing[97] Rule 901(a), which would designate a registered clearing agency as the reporting side for all clearing transactions to which it is a counterparty. In its capacity as the reporting side, the registered clearing agency would be permitted to select the registered SDR to which it reports.[98]

Agreement Between a Clearing Customer Bank and a Central Counterparty," 10 Pratt's J. of Bankr. Law 509, 515-517 (LexisNexis A.S. Pratt) (describing the clearing model for swaps in the United States); LCH.Clearnet Letter at 2 (generally concurring with the Commission's depiction of the agency model of clearing).

96 See 80 FR at 14599. 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 (i.e., alphas, in the agency model of clearing). Rule 239 under the Securities Act, 17 CFR 230.239, provides an exemption for certain security-based swap transactions involving an eligible clearing agency from all provisions of the Securities Act, other than anti-fraud provisions of Section 17(a) of the Securities Act. 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).

97 Throughout this release, the Commission distinguishes "existing" provisions of Regulation SBSR—i.e., provisions of Regulation SBSR that the Commission adopted in the Regulation SBSR Adopting Release in February 2015—from provisions that the Commission is adopting in this release.

98 See Regulation SBSR Proposed Amendments Release, 80 FR at 14746-47.

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

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99 See id., 80 FR at 14746, 14748. A life cycle event is, with respect to a security-based swap, any event that would result in a change in the information reported to a registered security-based swap data repository under Rule 901(c), 901(d), or 901(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. See 17 CFR 242.900(q).

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

101 See id. at 14751.

If the registered clearing agency does not know the identity of the alpha SDR, the registered clearing agency would be unable to report to the alpha SDR whether or not it accepted the alpha transaction for clearing, as required by proposed Rule 901(e)(1)(ii). Therefore, the Commission proposed a new subparagraph (3) of Rule 901(a), which would require the platform or reporting side for a security-based swap that has been submitted to clearing to promptly provide the relevant registered clearing agency with the identity of the alpha SDR and the transaction ID of the alpha transaction that will be or has been submitted to clearing.[102]

The Commission requested and received comment on a wide range of issues related to these proposed amendments. Four commenters generally supported the Commission's proposal to require the registered clearing agency to report clearing transactions and to allow it to select the SDR to which it reports.[103] One of these commenters noted that a clearing agency is "the sole party who holds the complete and accurate record of transactions and positions" for clearing transactions.[104] Another commenter agreed, noting that alternative reporting workflows "could require a person who does not have information about [a] clearing transaction at the time of its creation to report that transaction."[105] The commenter expressed the view that the Commission's proposal for reporting clearing transactions "is simple in that the same party in each and every transaction will be the party with the reporting requirement," and that this approach would eliminate confusion "as to who has the obligation to report the initial trades and different life-

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102 See id. at 14748.

103 See LCH.Clearnet Letter at 3; Better Markets Letter at 2; ISDA/SIFMA Letter at 24; ICE Letter at 1, 5.

104 ICE Letter at 1, 3 (arguing that no person other than a clearing agency has complete information about beta and gamma security-based swaps and that the reporting hierarchy in Rule 901(a)(2)(ii) is not suitable for reporting clearing transactions).

105 Better Markets Letter at 4.

cycle events."[106] Two commenters expressed the view that clearing agencies can leverage existing reporting processes and the existing infrastructure that they have in place with market participants and vendors to report clearing transactions.[107] A third commenter observed that requiring clearing agencies to report clearing transactions would be "efficient, cost effective and promote[] global data consistency," because clearing agencies already report transactions under swap data reporting rules established by the CFTC and certain foreign jurisdictions, such as the European Union and Canada.[108]

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

B. Discussion and Final Rules

After careful consideration of the comments, the Commission is adopting subparagraph (2)(i) of Rule 901(a) as proposed. As a result, a registered clearing agency is the reporting side

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106 Id. at 2.

107 See ICE Letter at 5; LCH.Clearnet Letter at 8.

108 ISDA/SIFMA Letter at 24.

109 See Markit Letter at 2-3.

110 See DTCC Letter at 5-6.

for all clearing transactions to which it is a counterparty.[111] In its capacity as the reporting side, the registered clearing agency is permitted to select the registered SDR to which it reports.

The Commission believes that, because a registered clearing agency creates the clearing transactions to which it is a counterparty, the registered clearing agency is in the best position to provide complete and accurate information to a registered SDR about the clearing transactions resulting from the security-based swaps that it clears. Two commenters noted that swap clearing agencies currently report clearing transactions to CFTC-registered swap data repositories, thus evidencing their ability to report clearing transactions.[112] The Commission's determination to assign to registered clearing agencies the duty to report clearing transactions should promote efficiency in the reporting process under Regulation SBSR by leveraging these existing workflows.

In the Regulation SBSR Proposed Amendments Release, the Commission considered three alternatives to requiring the clearing agency to report clearing transactions: (1) utilize the reporting hierarchy in existing Rule 901(a)(2)(ii); (2) modify that reporting hierarchy to place registered clearing agencies above other non-registered persons, but below registered security-based swap dealers and major security-based swap participants; and (3) require the reporting side

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111 In its capacity as a reporting side, a registered clearing agency must report all of the primary trade information and secondary trade information required by existing Rules 901(c) and 901(d), respectively, for each security-based swap to which it is a counterparty. See infra Section III(F) (discussing the UICs that a registered clearing agency must report).

112 See ICE Letter at 5; LCH.Clearnet Letter at 8. The Commission notes that the CFTC has adopted rules that would impose reporting responsibilities on these clearing agencies similar to those that the Commission is adopting today. See Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, Final Rule, 80 FR 41736 (June 27, 2016).

of the alpha to report both the beta and the gamma.[113] The Commission assessed each alternative and expressed the preliminary view that none would be as efficient and reliable as assigning the reporting duty to the registered clearing agency.[114] The Commission noted that each of the three alternatives could place the duty to report the clearing transaction on a person who does not have information about the clearing transaction at the time of its creation; to discharge its duty, this person would have to obtain necessary transaction information from the registered clearing agency or from a counterparty to the registered clearing agency.[115]

One commenter urged the Commission to adopt Alternative 3—i.e., to designate the reporting side for the alpha as the reporting side for the beta and gamma.[116] The commenter stated that the non-clearing-agency counterparties to the beta and gamma will always obtain information regarding their clearing transactions as a part of the clearing process.[117] The commenter suggested, therefore, that Alternative 3 would not result in unnecessary data transfers prior to reporting. In support of Alternative 3, the commenter noted that an alpha counterparty could rely on a "middleware reporting agent [who] could perform all steps necessary to report an alpha transaction as well as the associated beta and gamma security-based swaps in a matter of

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113 See 80 FR at 14745-46.

114 See id.

115 See id., 80 FR at 14746.

116 See Markit Letter at 13.

117 See id. at 5, 13. The commenter stated that a clearing agency "must, as a matter of course, send the cleared SBS trade record straight through to the sides of the trade or, if relevant, any non-affiliated reporting side (e.g., the platform or reporting agent). In other words, for the clearing agency to transmit a message indicating that a trade has or has not been accepted for clearing (a necessary last step to conclude cleared transactions between the clearinghouse and the parties to the beta and gamma trades) there is no 'extra step.'" Id. at 5.

seconds, while a clearing agency could, at best, perform only the last two steps."[118] Furthermore, while endorsing Alternative 3, the commenter also believed that Alternatives 1 and 2 would be preferable to the Commission's proposed approach.[119]

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

The Commission believes that assigning reporting duties for clearing transactions to registered clearing agencies will be more efficient and reliable than any of the alternatives discussed in the Regulation SBSR Proposed Amendments Release or raised by the commenter. Because each of these alternatives could assign the reporting duty to a person who does not have information about the clearing transaction at the time of its creation, the person with the reporting duty would have to rely on the clearing agency, directly or indirectly, to provide it with the information to be reported:

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118 Id. at 7 (also stating that the interconnectedness of the middleware provider makes it "better able to ensure the accuracy of trade records and the linkage between alpha, beta, and gamma trade records").

119 See id. at 13 ("these other alternatives, relative to the Proposal, encourage competition based on quality of service and cost and the rule of reporting agents and are more likely to result in outcomes whereby the same SDR will receive alpha, beta, and gamma trades").

120 Id.

- Alternative 1 would be to utilize the existing reporting hierarchy in Regulation SBSR. Since a registered clearing agency is not a registered security-based swap dealer or registered major security-based swap participant, it would occupy the lowest rung in the hierarchy. Therefore, in any clearing transaction between a registered clearing agency and a registered security-based swap dealer or registered major security-based swap participant, the registered security-based swap dealer or registered major security-based swap participant would incur the reporting duty. However, the registered security-based swap dealer or registered major security-based swap participant would be dependent on the registered clearing agency to supply the information that must be reported.[121]
- Alternative 2 is similar to Alternative 1 in that the registered security-based swap dealer or registered major security-based swap participant with the reporting duty would be dependent on the registered clearing agency to supply the information that would be reported.
- Alternative 3 would designate the reporting side for the alpha as the reporting side for the beta and gamma. Under this alternative, the alpha reporting side would need to obtain information from the clearing agency to report its own clearing transaction. The alpha reporting side also would need to obtain, either from the

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121 For any clearing transaction between a registered clearing agency and a non-registered person that is not guaranteed by a registered security-based swap dealer or registered major security-based swap participant, the reporting hierarchy in existing Rule 901(a)(2)(i) would require the sides to select the reporting side. In these circumstances, it is likely that the counterparties would select the registered clearing agency as the reporting side for the clearing transactions. Assigning the duty to report clearing transactions directly to the clearing agency is consistent with the Commission's objective of minimizing the possibility that the reporting obligation would be imposed on a non-registered counterparty. See Regulation SBSR Adopting Release, 80 FR at 14598.

non-reporting side or from the registered clearing agency, information about the clearing transaction of the alpha's non-reporting side. The Commission believes that Alternative 3 would be difficult to implement operationally and could create confidentiality concerns, because it does not offer a mechanism for reporting of subsequent clearing positions created by the registered clearing agency in the account of the non-reporting side of the alpha.[122]

- Under the fourth alternative,[123] while the Commission concurs with the approach of requiring the registered clearing agency to report the resulting beta and gamma transactions, the Commission believes that the registered clearing agency, when it has the duty to report security-based swaps, should be able to choose the registered SDR to which it reports.[124]

In general, the Commission believes that Regulation SBSR should not assign reporting obligations to persons who lack direct access to the information necessary to make the report. With respect to clearing transactions, a person who lacked direct access to the necessary information would be obligated to obtain the information from the clearing agency or another

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122 Assume, under Alternative 3, that P and Q execute a security-based swap (S1) and submit it to a registered clearing agency (CA). P is the reporting side of the S1 alpha. When CA accepts the alpha for clearing, P would then have to report the beta between P and CA and the gamma between Q and CA (gamma1). Further assume that Q executes a second transaction (S2) in the same product as S1 with R, and that R is the reporting side for S2. If CA accepts S2 for clearing, R then must report the beta between R and CA and the gamma between Q and CA (gamma2). In its next netting cycle, CA nets together gamma1 and gamma2 to create a new security-based swap representing the net open position (NOP) of Q in that product. Under Alternative 3, it is unclear who should report NOP as between P and R, because NOP is a security-based swap resulting from the netting of security-based swaps involving both P and R. Furthermore, Q likely will not want P or R to know of its additional activity in that product with other counterparties.

123 See Markit Letter at 13.

124 See infra Section III(C).

party who has access to that information to discharge its reporting duties. Placing the reporting duty on the non-clearing-agency side would create additional reporting steps and each extra reporting step could introduce some possibility for discrepancy, error, or delay. The Commission believes that discrepancies, errors, and delays are less likely to occur if the duty to report clearing transactions is assigned to registered clearing agencies directly, because there would be no intermediate steps where data would have to be transferred between parties before it is sent to a registered SDR. Therefore, the Commission is adopting Rule 901(a)(2)(i) as proposed. A registered clearing agency has complete information about all clearing transactions to which it is a counterparty. This includes not only betas and gammas that arise from clearing alphas, but also security-based swaps that result from the clearing agency netting together betas and gammas of the same person in the same product to create new open positions in successive netting cycles. Under the alternatives discussed above, a person other than the registered clearing agency would have to obtain information from the clearing agency to report the clearing transactions—not just once, to report the initial beta and gamma, but potentially with every netting cycle of the registered clearing agency. This further increases the risks that there could be discrepancies, errors, or delays in reporting new clearing transactions as they are created.

The commenter who endorsed Alternative 3 also argued that "[t]he Proposal's failure to acknowledge the efficiency benefits and reduced costs that result from the presence of middleware reporting agents is a serious defect."[125] To the contrary, the Commission has

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[125] Markit Letter at 8. See also id. at 6 ("The Proposal ignores the efficiency gains resulting from the presence of middleware reporting agents in the market for SDR and post-trade processing services despite noting such benefits in the Regulation SBSR Final Rule") and 8 ("The efficiency benefits introduced by the presence of middleware reporting agents, if they were properly accounted for by the Commission . . . would have provided additional

considered the potential economic effects of new Rule 901(a)(2)(i) and the alternatives noted above, including the role that agents might play in reporting security-based swap transactions under these different alternatives.[126] The Commission notes that, while Regulation SBSR permits the use of agents to carry out reporting duties, it does not require the use of an agent.

C. Choice of Registered SDR for Clearing Transactions

In the Regulation SBSR Proposed Amendments Release, the Commission considered whether, if a registered clearing agency is assigned the duty to report clearing transactions, the clearing agency should be permitted to choose the registered SDR to which it reports or whether it should be required to report them to the alpha SDR.[127] The Commission proposed to allow a registered clearing agency to choose the registered SDR to which it reports clearing transactions.[128] The Commission recognized that this approach might result in beta and gamma security-based swaps being reported to a registered SDR other than the alpha SDR, thereby requiring the Commission to link these trades together across SDRs.[129]

Some commenters supported the Commission's proposal to allow the registered clearing agency to select the registered SDR to which it reports.[130] Other commenters, however, recommended that the Commission require the registered clearing agency to report the beta and

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and, in our opinion, decisive support to the three alternative approaches described by the Commission").

126 See infra Sections XIII(A) and (B).

127 See 80 FR at 14746-47.

128 See id.

129 See id.

130 See ICE Letter at 1; LCH.Clearnet Letter at 3; ISDA/SIFMA Letter at 24.

gamma transactions to the alpha SDR.[131] These commenters generally believed that requiring beta and gamma security-based swaps to be reported to the alpha SDR would reduce data fragmentation and enhance the Commission's ability to obtain a complete and accurate understanding of the security-based swap market.[132]

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

Another commenter noted that, in its experience with CFTC swap data reporting rules, clearing agencies "generally send beta and gamma records to an affiliated SDR" even though other market participants generally prefer using an SDR not affiliated with the clearing agency.[135] In this commenter's view, clearing agencies do not "provide services or fees that

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131 See Better Markets Letter at 2, 4-5 ("we are concerned that allowing the clearing agency to report data to a different SDR than the one to which the initial alpha trade was reported could cause potential complications, such as double-counting or bifurcated data"); DTCC Letter at 2, 6; Markit Letter at 6.

132 See id. See also DTCC Letter at 5 (predicting that the Commission "would encounter various implementation challenges" in linking alpha security-based swaps to the associated beta and gamma transactions that had been reported to different SDRs because SDRs might "store, maintain, and furnish data to regulators in formats different from other trade repositories").

133 See DTCC Letter at 4, 6.

134 DTCC Letter at 4.

135 Markit Letter at 6.

make them competitive as SDRs for all swap trade records."[136] The commenter believed that the Commission's proposed approach would result in tying of clearing services to SDR services and create a market for SDR and post-trade processing services that is unresponsive to market forces.[137] The commenter also stated that "middleware reporting agents can offer an even lower price" than registered clearing agencies for reporting beta and gamma transactions.[138]

Regulation SBSR generally allows the person with a duty to report to choose the registered SDR to which it reports.[139] This approach is designed to promote efficiency by allowing the person with the reporting duty to select the registered SDR based on greatest ease of use, the lowest fees, or other factors that are relevant to the person with whom the duty rests. As noted in the Regulation SBSR Adopting Release, a clearing transaction is an independent security-based swap and not a life cycle event of an alpha security-based swap that is submitted to clearing.[140] Under Rule 901(a)(2)(i), as adopted herein, a registered clearing agency is the reporting side for all clearing transactions to which it is a counterparty; because the registered

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136 Id.

137 See id. at 2-3, 12 (stating that, if a registered clearing agency is permitted to choose the registered SDR to which it reports clearing transactions, the clearing agency "can more easily leverage a dominant clearing agency position to gain a dominant SDR positon by selecting an affiliated SDR as its SDR of choice for beta and gamma trades").

138 See id. at 4, 7-8 (noting that, "[i]n contrast to currently registered SBS clearing agencies . . . middleware reporting agents, such as MarkitSERV, are connected to numerous trade repositories globally and have achieved economies of scale with respect to the straight-through processing of cleared swaps across numerous clearinghouses and regulatory reporting regimes").

139 See Regulation SBSR Adopting Release, 80 FR at 14597-98 ("The reporting side may select the registered SDR to which it makes the required report").

140 See 80 FR at 14599, n. 291. However, the determination by a registered clearing agency of whether or not to accept the alpha for clearing is a life cycle event of the alpha transaction. As discussed above, new Rule 901(e)(1)(ii) requires a registered clearing agency to report these life cycle events to the alpha SDR.

clearing agency has the duty to report, it also has the ability to choose the registered SDR. The Commission considered requiring the registered clearing agency to report the beta and gamma to the alpha SDR. But had the Commission done so, the registered clearing agency would be required to report clearing transactions to a registered SDR that might not offer the clearing agency what it believes to be the most efficient or convenient means of discharging its reporting duty, as others with a reporting duty are permitted to do. As noted in Section XIII(A), infra, a clearing agency may be able to realize efficiency gains through vertical integration of clearing and SDR services and may choose to use an affiliated SDR. However, if an independent SDR or middleware reporting agent offers a competitive service model that provides a clearing agency with a duty to report a more efficient or cost-effective means of fulfilling its reporting obligations, the registered clearing agency may choose to use those instead.

One commenter expressed the view that requiring the beta and gamma to be reported to the alpha SDR would help to ensure that regulators are able to efficiently access and analyze all reports related to a security-based swap.[141] The commenter also stated that a clearing agency will need to incur costs to establish connections with alpha SDRs for purposes of reporting whether or not the clearing agency has accepted the alpha for clearing.[142] The commenter cautioned, furthermore, that "[t]he proposed process assumes that, in all instances, the transaction ID provided to the clearing agency would be accurate."[143] The commenter stated that

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141 See DTCC Letter at 4. See also Markit Letter at 13 (raising as an alternative to the Commission's proposed approach that the Commission should require a clearing agency to report the beta and gamma to the alpha SDR).

142 See DTCC Letter at 5.

143 Id. The commenter added that it has encountered issues under the CFTC's swap reporting framework when transaction IDs have been reported inconsistently for the same trade. See id.

only the alpha SDR would be able to ascertain whether the alpha transaction ID is valid based on its existing inventory.[144] The commenter concluded that, "[r]ather than establishing a complex reporting process for clearing transactions and potentially introducing data quality issues . . . the Commission [should] consider preservation of high quality data and ready access to a full audit trail as the paramount concerns that should govern the choice of SB SDR for clearing transactions."[145] Finally, the commenter questioned the ease with which the Commission would be able to track related transactions across SDRs through the transaction ID, stating that "the Commission would likely be forced to expend significant resources harmonizing data sets from multiple SDRs, thereby hindering the Commission's ready access to a comprehensive audit trail."[146]

The Commission has considered the commenter's arguments but continues to believe that it is appropriate to allow a registered clearing agency to choose the registered SDR to which it reports. Although the commenter is correct that Regulation SBSR will require a registered clearing agency to report to the alpha SDR whether or not the clearing agency accepts the alpha for clearing, this does not necessarily mean that the clearing agency would find it more efficient or convenient to make initial (and life cycle event) reports of clearing transactions to the alpha SDR. Betas, gammas, and transactions that arise from subsequent clearing cycles are independent security-based swaps. It is possible that a registered clearing agency might conclude that a registered SDR other than the alpha SDR is better suited for reporting these new transactions. Of course, if the registered clearing agency determines that reporting beta and

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144 See id.

145 Id.

146 Id.

gamma security-based swaps to the alpha SDR is, in fact, equally convenient or more convenient than connecting and reporting to a different SDR, the registered clearing agency would be free to make this choice under new Rule 901(a)(2)(i).

The Commission shares the commenter's concern about ensuring that a termination reported by a registered clearing agency to an alpha SDR includes a valid transaction ID of an alpha held by that SDR and acknowledges the commenter's observation that this might not always occur in the CFTC's swap reporting regime. Because Rule 901(g) requires a registered SDR to assign a transaction ID to each security-based swap (or establish or endorse a methodology for transaction IDs to be assigned by third parties), the registered SDR should know the transaction ID of every security-based swap reported to it on a mandatory basis. If a registered clearing agency submits a termination report with a transaction ID that the registered SDR cannot match to an alpha transaction report, the registered SDR's policies and procedures must specify how this situation will be addressed.[147] The SDR's policies and procedures could provide, for example, that the registered SDR will hold the termination report from the registered clearing agency in a pending state until either (1) the registered SDR obtains a valid transaction ID from the registered clearing agency (if the registered clearing agency originally had reported an incorrect transaction ID); or (2) the registered SDR determines that it can otherwise match the termination report against the correct alpha (if the clearing agency reported the correct transaction ID but the correct transaction ID did not for some reason appear in the report of the

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

alpha transaction). Furthermore, in the Regulation SBSR Proposed Amendments Release, the Commission acknowledged that it might not be possible for a registered SDR to determine immediately whether a particular transaction ID is invalid because a registered clearing agency could report whether or not it has accepted an alpha for clearing before the registered SDR has received a transaction report for that alpha.[148] The Commission stated that, in such case, the registered SDR should address this possibility in its policies and procedures, which could provide, for example, that the registered SDR would hold a registered clearing agency's report of the disposition of an alpha in a pending state until the registered SDR receives the transaction report of the alpha; the registered SDR could then disseminate as a single report the security-based swap transaction information and the fact that the alpha had been terminated.[149] Because the reporting side for an alpha generally has 24 hours from the time of execution to report the transaction,[150] the duration of the pending state generally should not exceed 24 hours after receipt of the clearing agency's report of whether or not it has accepted the alpha for clearing. The Commission staff intends to evaluate whether the termination reports submitted by registered clearing agencies to an alpha SDR are appropriately matched to the alpha.

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

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

149 See id.

150 See Rule 901(j).

151 See supra notes 113 to 124 and accompanying text.

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

If, as suggested by some commenters, the Commission required Beta1 and Gamma1 to be reported to SDR1, Beta2 and Gamma2 to be reported to SDR2, and Beta 3 and Gamma3 to be reported to SDR3, operational difficulties would result when Clearing Agency K nets Beta1, Beta2, and Beta3 as part of its settlement cycle because each of the Betas has been reported to a different SDR.

- At the end of Day 1, Clearing Agency K nets Beta1, Beta2, and Beta3 together to create a net open position (NOP) of Party A in Product XYZ.
- As part of the netting process, Clearing Agency K terminates Beta1, Beta2, and Beta 3. Under new Rule 901(e)(1)(ii), Clearing Agency K would have to report the termination of Beta1 to SDR1, the termination of Beta2 to SDR2, and the termination of Beta3 to SDR3.
- NOP is a new security-based swap and must be reported to a registered SDR.

Under the commenters' alternate approach, it is not apparent which registered SDR should receive the report of NOP, because NOP incorporates transactions that were originally reported to three different registered SDRs. Reporting NOP to each of SDR1, SDR2, and SDR3

serves no purpose because the same position would be reflected in three separate SDRs and could lead to confusion about the true size of the security-based swap market.

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

The Commission acknowledges that permitting a registered clearing agency to report clearing transactions to a registered SDR other than the alpha SDR also could increase complexity for market participants who would prefer to have reports of all of their security-based swaps in a single SDR.[153] The Commission notes that SDRs are required to "collect and maintain accurate SBS transaction data so that relevant authorities can access and analyze the data from secure, central locations, thereby putting them in a better position to monitor for potential market abuse and risks to financial stability."[154] The Commission notes, in addition,

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152 See DTCC Letter at 4.

153 See id. at 16.

154 SDR Adopting Release, 80 FR at 14440.

that Regulation SBSR permits a security-based swap counterparty to make non-mandatory reports of security-based swaps to an SDR of its choice (if the SDR is willing to accept them).[155] Thus, to the extent that SDRs are willing to accept such non-mandatory reports, non-clearing-agency counterparties of clearing transactions would have a mechanism for consolidating reports of their transactions in a single SDR if such counterparties wished to do so.

The Commission does not agree with the assertion made by one commenter that permitting a registered clearing agency to report clearing transactions to a registered SDR of its choice necessarily results in the tying of clearing services to SDR services.[156] Under the rules being adopted today, the user of clearing services—i.e., an alpha counterparty that clears a security-based swap at a registered clearing agency—has no obligation to report the subsequent clearing transaction.

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

D. Scope of Clearing Agencies Covered by Final Rules

Proposed Rule 901(a)(2)(ii) would assign clearing agencies a duty to report under Regulation SBSR based on their registration status, not on their principal place of business. Thus, a foreign clearing agency, like a U.S. clearing agency, would be required to report all

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155 See Rule 900(r) (defining a "non-mandatory report" as any information provided to a registered SDR by or on behalf of a counterparty other than as required by Regulation SBSR).

156 See Markit Letter at 3, 9-10.

security-based swaps of which it is a counterparty if it is registered with the Commission. Commenters had differing recommendations with respect to the scope of clearing agencies that should be covered by proposed Rule 901(a)(2)(ii). Two commenters expressed the view that the rule should apply to all registered clearing agencies, regardless of their principal place of business.[157] A third commenter agreed that a registered clearing agency with its principal place of business inside the United States should be required to report all clearing transactions, but took a different view with respect to a registered clearing agency with its principal place of business outside the United States; the non-U.S. clearing agency, according to the commenter, should be required to report only clearing transactions involving a U.S. person.[158]

Final Rule 901(a)(2)(i) assigns the reporting obligation for a clearing transaction to a registered clearing agency that is a counterparty to the transaction. The rule applies to any registered clearing agency without regard to the location of its principal place of business. The Commission generally believes that, if a person registers with the Commission as a clearing agency, it should assume the same obligations as all other persons that register as clearing agencies.[159] Conversely, new Rule 901(a)(2)(i) does not apply to unregistered clearing agencies

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157 See LCH.Clearnet Letter at 9 ("Registered clearing agencies are best placed to report cleared transactions. Assigning these obligations to other participants for foreign domiciled clearing agencies will needlessly complicate the reporting landscape"); ISDA/SIFMA Letter at 24.

158 See ICE Letter at 5.

159 The Commission notes, however, that the reporting duty of a registered clearing agency under new Rule 901(a)(2)(i) must be read in connection with Rule 908(a), amendments to which the Commission is adopting today. In other words, a registered clearing agency must report only those security-based swaps that fall within Rule 908(a). It is likely that many clearing transactions of a registered clearing agency having its principal place of business outside the United States would not fall within any prong of Rule 908(a) and thus would not have be reported by the registered clearing agency pursuant to Rule 901(a)(2)(i). For example, a clearing transaction between a registered clearing agency and a non-U.S. person that is not registered with the Commission as a security-based

(e.g., persons that act as clearing agencies outside the United States that are not required to, and choose not to, register with the Commission).

A fourth commenter requested the Commission to clarify whether clearing agencies that are "deemed registered" under the Exchange Act are "registered clearing agencies" for purposes of Regulation SBSR, which would trigger the duty to report clearing transactions even before they complete a full registration process with the Commission.[160] The Commission previously has stated that each clearing agency that is deemed registered is required "to comply with all requirements of the Exchange Act and the rules and regulations thereunder applicable to Registered Clearing Agencies."[161] Pursuant to this guidance, a "deemed registered" clearing agency is required to comply with all requirements of Regulation SBSR that are applicable to registered clearing agencies.[162]

E. Reporting Under the Principal Model of Clearing

Two commenters acknowledged that the agency model of clearing predominates in the United States but requested that the Commission clarify the application of Rule 901(a)(2)(ii) to

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swap dealer or major security-based swap participant, and who is not utilizing U.S. personnel to arrange, negotiate, or execute the clearing transaction, would not fall within any prong of Rule 908(a).

160 See ISDA/SIFMA at 26.

161 Securities Exchange Act Release No. 69284 (April 3, 2013), 68 FR at 21046, 21048 (April 9, 2013).

162 This commenter also sought guidance regarding the reporting obligations relating to a security-based swap between a clearing agency that has been exempted from registration by the Commission and a counterparty. See ISDA/SIFMA Letter at 26. The Commission does not believe that this issue is ripe for consideration. The Commission anticipates that it would consider this issue if it exempts from registration a clearing agency that acts as a central counterparty for security-based swaps.

security-based swaps cleared under the principal model of clearing.[163] One of these commenters recommended that the Commission require all clearing transactions to be reported according to the workflows used in the agency model of clearing.[164] By contrast, the other commenter argued that "a set of clearing transactions should be reported in accordance with the actual applied clearing model."[165]

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

F. Clearing Transactions and Unique Identification Codes

Rules 901(c) and 901(d), respectively, require the person with the duty to report to report all of the primary trade information and secondary trade information for each security-based swap to which it is a counterparty. Noting that existing Rule 901(d)(2) requires the reporting

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163 See ISDA/SIFMA Letter at 25 ("Although we do not have reason to believe the principal model will become prevalent in the U.S. market, it will be used in a percentage of SBS reportable under SBSR especially by non-U.S. parties registered as SBSDs or MSBSPs which may be the direct or indirect counterparty to a SBS. Providing additional guidance on the treatment of SBS cleared via the principal model would be useful to promote data accuracy and consistency"); ICE Letter at 2-3.

164 See ICE Letter at 3 (arguing that reporting principal clearing workflows is unnecessarily complicated and costly and "results in a duplicative representation of cleared records submitted to repositories").

165 ISDA/SIFMA Letter at 26.

166 Existing Rule 902(c)(6) provides that a registered SDR shall not disseminate 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.

side to report, as applicable, the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID of the direct counterparty on the reporting side, the Commission in the Regulation SBSR Proposed Amendments Release asked whether these types of unique identification codes ("UICs")[167] would ever be applicable to a registered clearing agency when it incurs the duty to report a clearing transaction.[168] Three commenters suggested that these UICs are not applicable to clearing transactions and should not have to be reported by the clearing agency.[169]

The Commission agrees. In its capacity as a central counterparty for security-based swaps, a registered clearing agency does not engage in market-facing activity and thus would not utilize a branch, broker, execution agent, trader, or trading desk to effect security-based swap transactions. Therefore, these UICs are not applicable to clearing transactions, and a registered clearing agency need not report any UICs pursuant to Rule 901(d)(2).[170]

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167 See Rule 900(qq) (defining "UIC" as "a unique identification code assigned to a person, unit of a person, product, or transaction").

168 See 80 FR at 14752.

169 See DTCC Letter at 16; ICE Letter at 4; LCH.Clearnet Letter at 8.

170 The Commission also deems these UICs "not applicable" to the non-clearing agency side of a clearing transaction; therefore, under Rule 906(a), a registered SDR need not query a non-clearing-agency participant for these UICs with respect to a clearing transaction, and the participant need not provide these UICs to the registered SDR with respect to any clearing transaction. As the Commission has previously stated when exempting most types of clearing transactions from public dissemination, clearing transactions "are mechanical steps taken pursuant to the rules of the clearing agency." Regulation SBSR Adopting Release, 80 FR at 14610. See also Rule 902(c)(6). Thus, the Commission does not believe that clearing transactions can meaningfully be said to involve a market-facing subdivision or agent of the counterparty such as the branch, trading desk, individual trader, broker, or execution agent. To the extent that there was meaningful participation by a branch, trading desk, individual trader, broker, or execution agent on behalf of the counterparty, these UICs must be provided in connection with the original alpha transaction—either in its capacity as the reporting side (in which case it would be required to provide these UICs pursuant to Rule 901(d)(2)) or as the non-reporting side (in which case it would be required to provide these UICs pursuant to Rule 906(a) if it were a participant of the registered SDR). Cf. DTCC Letter at 16 (while not specifically

G. Reporting Whether an Alpha Transaction is Accepted for Clearing

Existing Rule 901(e)(1)(i) addresses the reporting requirements for most life cycle events and assigns the reporting duty for reporting those life cycle events to the reporting side of the original transaction. However, Rule 901(e)(1)(i) specifically provides that "the reporting side shall not report whether or not a security-based swap has been accepted for clearing." In the Regulation SBSR Proposed Amendments Release, the Commission proposed a new subparagraph (ii) to Rule 901(e)(1) that would require a registered clearing agency that receives an alpha to report to the alpha SDR whether or not it has accepted the alpha for clearing.[171]

Two commenters expressed support for proposed Rule 901(e)(1)(ii), noting that clearing agencies would be well-positioned to issue a termination report for the alpha and subsequently to report the beta and gamma to a registered SDR.[172] However, two commenters objected to proposed Rule 901(e)(1)(ii). One of these commenters argued that proposed Rule 901(e)(1)(ii) was unnecessary because the counterparties to the alpha would learn of the disposition of the alpha from the clearing agency in the normal course of business, and could report this information to the alpha SDR.[173] This commenter further asserted that concerns regarding "data

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addressing the question of whether these UICs should be reported for the non-clearing-agency side of a clearing transaction, questioning whether the non-reporting side should be required to report these UICs for any transaction).

171 See infra Section III(J) (discussing when an alpha has been rejected from clearing).

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

173 See Markit Letter at 5 ("the clearing agency must, as a matter of course, send the cleared SBS trade record straight through to the sides to the trade or, if relevant, any non-

discrepancies, errors, or delays" cited by the Commission in support of proposed Rule 901(e)(1)(ii) were unfounded and could be addressed, if necessary, through rulemaking or enforcement action to encourage clearing agencies to provide accurate and timely data to platforms and counterparties about clearing dispositions.[174] Similarly, the second commenter that objected to proposed Rule 901(e)(1)(ii) argued that the "party that originally reported the alpha trade is best placed to report the result of clearing"[175] and that clearing agencies should not have to incur costs associated with establishing connectivity to alpha SDRs.[176] This commenter also questioned why the Commission's approach to the reporting of cleared transactions differed from its approach to the reporting of prime brokerage transactions,[177] where the Commission is requiring that the person who reported the initial leg of a prime brokerage transaction (not the

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affiliated reporting side (e.g., the platform or reporting agent). In other words, for the clearing agency to transmit a message indicating that a trade has or has not been accepted for clearing (a necessary last step to conclude cleared transactions between the clearinghouse and the parties to the beta and gamma trades), there is no 'extra step.' Moreover, the processing of cleared trades is nearly instantaneous, resulting in no operationally significant delay").

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

175 LCH.Clearnet Letter at 8.

176 See id. at 8-10 (arguing that the incremental costs of assigning the reporting obligation to the alpha reporting side would be small compared to the costs associated with registered clearing agencies having to establish connectivity to alpha SDRs). The Commission notes that one of the commenters that supported the general approach of requiring registered clearing agencies to incur reporting duties argued also that "CAs [i.e., clearing agencies] should not incur SDR fees to report alpha termination messages. Requiring CAs to become a full 'participant' of alpha SDRs, is unnecessary and overly burdensome for CAs." ICE Letter at 6.

177 See LCH.Clearnet Letter at 7.

prime broker) must report any life cycle event resulting from whether the prime broker accepts or rejects that transaction.[178]

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

One commenter argued that requiring a registered clearing agency to report to an SDR not of its choosing whether it accepts an alpha for clearing "is in contradiction with the Commission's reasons for permitting a registered clearing agency to decide which registered SDR to use for reporting of beta and gamma trades." [179] The Commission does not believe that there is a contradiction in its reasoning. The person with the duty to report whether or not the alpha was accepted for clearing must report that information to the alpha SDR or else it would be difficult to pair the alpha transaction report with the report of its clearing disposition.[180] The

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

179 LCH.Clearnet Letter at 3.

180 Existing Rule 901(e)(2) requires a life cycle event to be reported to the same entity to which the original security-based swap transaction was reported. A termination of an alpha resulting from action by a registered clearing agency is a life cycle event of the alpha, and thus must be reported to the alpha SDR. Requiring the clearing disposition report to go to the alpha SDR will allow the alpha SDR to match the relevant reports and understand the disposition of the alpha. Allowing the registered clearing agency to report the disposition of the alpha to a registered SDR of its choice, rather than to the alpha SDR, could make it difficult, if not impossible, to match the alpha transaction report with the report of the alpha's clearing disposition. The Commission seeks to minimize the

Commission believes that a registered clearing agency, because it chooses when and how to handle an alpha that is submitted for clearing, is best placed to report whether or not it accepts the alpha for clearing.

The Commission considered, but determined not to adopt, the alternative recommended by certain commenters of assigning to the person who has the duty to report the initial alpha (and thus can choose the alpha SDR) the duty of also reporting to the alpha SDR whether or not the registered clearing agency has accepted the alpha for clearing. The Commission acknowledges, as one commenter pointed out, that counterparties to security-based swaps that are submitted to clearing would in the normal course learn from the clearing agency whether or not a security-based swap has been accepted for clearing. The Commission believes, however, that requiring a registered clearing agency to report the termination of the alpha will increase the likelihood that the alpha termination will be reported accurately and without delay, thereby helping to minimize the problem of orphan alphas and helping to promote the integrity of reported security-based swap information. The adopted approach centralizes the function of reporting alpha dispositions in self-regulatory organizations that operate under rules approved by the Commission. Centralizing this reporting function into registered clearing agencies, rather than relying on a potentially large number of platforms and reporting sides to report alpha clearing dispositions,

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problem of "orphan alphas," where it cannot readily be ascertained whether a transaction involving a product that is customarily submitted to clearing has in fact been submitted to clearing and, if so, whether it was accepted for clearing. If alpha transactions are not reported as terminated or they are reported as terminated but the alpha SDR cannot match the report of termination with the original transaction report—i.e., the alpha is "orphaned"—it would be more difficult for the Commission to carry out various oversight functions, such as calculating the total amount of open exposures resulting from security-based swap activity and understanding trends in clearing activity, including adherence to any clearing mandate.

should help minimize the potential for data discrepancies and delays.[181] Not all counterparties that may have a reporting obligation would be registered entities. The Commission thus has greater confidence in the ability of clearing agencies registered with the Commission to accurately report alpha dispositions. The Commission believes that the approach adopted today is preferable to an approach that would require platforms and reporting sides to report the alpha clearing disposition, given that these entities would first have to receive that information from the registered clearing agency. The Commission believes that the approach of requiring the registered clearing agency to report that information directly to the alpha SDR is preferable to relying on Commission rulemaking or enforcement action, as one commenter suggests,[182] to address data accuracy concerns arising from the exchange of information from the clearing agency to the platform or reporting side.

The Commission believes that the approach suggested by commenters to require the person who had the duty to report the alpha transaction also to report whether or not a clearing agency accepts an alpha for clearing is particularly unsuitable for situations where the alpha was executed on a platform and the platform incurs the duty to report that alpha under new Rule 901(a)(1).[183] A platform is not a counterparty to the transaction and thus, unlike a counterparty, typically would not monitor or record life cycle events, or be involved in post-trade processing, of any transactions executed on the platform (beyond sending messages about executed transactions to other infrastructures, such as SDRs and clearing agencies, that do carry out post-trade processing functions). The commenters' suggested approach of requiring the person who

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

182 See Markit Letter at 5.

183 See infra Section IV(A) (discussing adopting of new Rule 901(a)(1)).

has the duty to report the alpha also to report whether or not the clearing agency has accepted the alpha for clearing would thus require platforms to develop processes for tracking and reporting life cycle events of platform-executed alphas that they currently do not have.

The Commission believes that it is more efficient to require a registered clearing agency to report all alpha dispositions, rather than having one rule for reporting the disposition of alphas that are executed on-platform and a different rule for reporting the disposition of alphas that are executed off-platform. The potential candidates for reporting the disposition of on-platform alphas include the platform, one of the sides of the alpha, and the clearing agency. As noted above, a platform is not well-positioned to perform this function. Furthermore, because neither side has the duty to report an on-platform alpha (because the platform has the duty), difficulty could arise from attempting to assign to one of the sides the duty to report the alpha disposition, particularly if the sides traded anonymously on the platform. Given the alternatives and for the reasons noted above, the Commission believes that the clearing agency is in the best position to report whether or not it has accepted a transaction for clearing, with respect to both on- and off-platform alphas. In this regard, the Commission notes that, once a clearing agency has established a mechanism for reporting to an SDR whether or not it has accepted on-platform alphas for clearing, there would be only minimal incremental burdens to send additional messages to that SDR to report whether or not the clearing agency has accepted off-platform alphas for clearing.

As noted above, one commenter questioned why the Commission's approach to the reporting of whether or not an alpha is accepted for clearing differs from its approach to the reporting of life cycle events stemming from the acceptance or rejection by a prime broker of the

initial leg of a prime brokerage transaction.[184] The commenter correctly understands that, in the prime brokerage context, the reporting side of the first transaction of a prime brokerage workflow (whether in a two- or three-legged scenario) must report the termination of that transaction.[185] In contrast, for a transaction submitted to clearing, the registered clearing agency, rather than the reporting side for the initial alpha transaction, must report whether or not it has accepted the alpha for clearing. The commenter disagrees with this approach to the reporting of transactions submitted to clearing, asserting that the reporting side or platform, as applicable, should report whether the alpha has been accepted for clearing.[186]

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

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184 See LCH.Clearnet Letter at 7.

185 See infra Section VII(B) for a discussion of how Regulation SBSR applies to prime brokerage transactions, including both a two-legged and three-legged model.

186 See LCH.Clearnet Letter at 3, 7.

Finally, two commenters expressed concern about the costs associated with requiring registered clearing agencies to report whether or not they accept alphas for clearing.[187] One commenter stated, for example, that "[c]onnecting to all registered SDRs is necessary to ensure that the registered clearing agency is prepared to report to any SDR to which an alpha trade could be reported . . . [T]here is a significant cost to establishing and maintaining connectivity to registered SDRs to facilitate the reporting required by Rule 901."[188] The second commenter argued that "CAs [i.e., clearing agencies] should execute an agreement with [the alpha SDR] outlining the requirements to report termination messages; however, CAs should not incur SDR fees to report alpha termination messages."[189] This commenter cautioned, furthermore, that "[r]equiring CAs to become a full 'participant' of alpha SDRs is unnecessary and overly burdensome for CAs."[190]

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

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187 See ICE Letter at 6 (stating that a clearing agency "should not incur SDR fees to report alpha termination messages"); LCH.Clearnet Letter at 8-10.

188 LCH.Clearnet Letter at 3.

189 ICE Letter at 6.

190 Id.

191 17 CFR 240.13n-4(c)(1)(i).

With respect to the wider costs associated with clearing agencies' reporting of alpha clearing dispositions to registered SDRs, the Commission notes that Rule 901(e)(1)(ii), by its terms, requires registered clearing agencies to report only a limited amount of information (i.e., whether or not they have accepted a security-based swap for clearing, along with the transaction ID of the relevant alpha) and therefore does not require the clearing agency to have connectivity sufficient to report all of the primary and secondary trade information of a security-based swap.[192] The Commission believes that registered SDRs should consider providing a minimally burdensome means for registered clearing agencies to report whether or not they accept an alpha for clearing.[193]

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

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

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192 As described in more detail in Section XII(A), infra, the Commission has considered the costs of requiring registered clearing agencies to have the capability to report clearing dispositions to multiple alpha SDRs and the benefits associated with ensuring that the clearing disposition report is made by the person with immediate and direct access to the relevant information.

193 For example, a registered SDR should consider how it will comply with Rule 13n-4(c)(1)(ii) under the Exchange Act, 17 CFR 240.13n-4(c)(1)(ii), which requires that the SDR permit market participants to access specific services offered by the SDR separately, and Rule 13n-4(c)(1)(iii) under the Exchange Act, 17 CFR 240.13n-4(c)(1)(iii), which requires the SDR to have objective criteria that would permit fair, open, and not unreasonably discriminatory access to services offered and data maintained by the SDR, when offering access to a registered clearing agency that seeks only to report whether or not it has accepted individual transactions for clearing.

Existing Rule 901(e)(2) requires the person who has the duty to report a life cycle event to include in the report of the life cycle event the transaction ID of the original transaction. Under new Rule 901(e)(1)(ii), a registered clearing agency that accepts or rejects an alpha transaction from clearing incurs this duty. The transaction ID of the alpha transaction is information that the registered clearing agency might not have, because the registered clearing agency is not involved in the execution or reporting of the alpha. Therefore, the Commission proposed a new subparagraph (3) of Rule 901(a), which would require the person who has the duty to report the alpha security-based swap to provide the registered clearing agency with the transaction ID of the alpha and the identity of the alpha SDR.

One commenter "acknowledged the value" of the proposed rule and noted that in other jurisdictions the data flows to clearing agencies already include identification information for alpha transactions, so these data flows should be extensible to the security-based swap market.[194] By contrast, a second commenter expressed the view that the proposed rule "would add a layer of complexity to the reporting framework" and noted that the reporting person for the alpha might provide an inaccurate transaction ID to the registered clearing agency to which the trade is submitted.[195]

After carefully considering the comments received, the Commission is adopting Rule 901(a)(3) as proposed. Although Rule 901(a)(3) adds an additional step to the reporting framework, the Commission believes that this additional step is necessary to facilitate the linking of related transactions. Under new Rule 901(e)(1)(ii), a registered clearing agency must report to the entity to which the original security-based swap was reported whether or not it accepts the

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194 See ISDA/SIFMA Letter at 25.

195 DTCC Letter at 4-5.

alpha for clearing. For the alpha SDR to link the registered clearing agency's report of acceptance or rejection to the appropriate transaction, the registered clearing agency must be able to include the transaction ID of the alpha transaction in its report to the alpha SDR. The Commission further believes that the person having the duty to report the alpha is best situated to also report the transaction ID of the alpha and the identity of the alpha SDR to the registered clearing agency. While it is true, as the commenter asserts, that the person having the duty to report the alpha might provide an inaccurate transaction ID to the registered clearing agency, the same could be said about any reporting requirement imposed by Regulation SBSR. This situation should be addressed, at least in part, by Rule 13n-5(b)(1)(i) under the Exchange Act,[196] which requires every SDR to establish, maintain, and enforce written policies and procedures reasonably designed for the reporting of complete and accurate transaction data to the SDR.[197] Furthermore, the person with the duty to report the alpha is certain to know the transaction ID and the identity of the alpha (since it selected the SDR) and thus is well placed to provide this information to the registered clearing agency, which would allow the clearing agency to discharge its duty under new Rule 901(e)(1)(ii).

Two commenters sought guidance regarding the means by which persons with the duty to report the alpha transaction could provide the transaction ID of the alpha and the identity of the

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196 17 CFR 240.13n-5(b)(1)(i).

197 A registered SDR should consider including in its policies and procedures under Rule 13n-5(b)(1)(i) what actions to take if it receives clearing disposition information from a registered clearing agency that includes transaction IDs of alpha transactions that do not match to the records of any alpha transactions held at the registered SDR. The SDR might seek to call this discrepancy to the attention of the registered clearing agency so that the registered clearing agency could work with persons who are required by Rule 901(a)(3) to provide the registered clearing agency with the transaction IDs of the alphas.

alpha SDR to the registered clearing agency.[198] One of these commenters stated that some platforms can provide the information required by Rule 901(a)(3) using third-party service providers, but cautioned that "platforms would be forced to undertake a significant development investment if required to perform that function itself and to build functionality that replaces existing solutions."[199] The commenter requested, therefore, that the Commission "make clear in its final rules that platforms have discretion to determine the most appropriate technological manner in which they comply [with Rule 901(a)(3)]."[200] The other commenter expressed the view that "the most efficient approach would be for clearing agencies to gather the choice of alpha SDR for an asset class or product once from all reporting sides and platforms, and retain and maintain as static data rather than requiring a notification on a transactional basis."[201]

Final Rule 901(a)(3) does not prescribe a specific means by which the person with the duty to report an alpha must inform the registered clearing agency of the alpha's transaction ID and the identity of the alpha SDR. There is no prohibition on utilizing existing infrastructure. Thus, market participants may determine the most efficient way of communicating this information. The Commission notes, however, that Rule 901(a)(3) applies on a transaction-by-transaction basis. Thus, while it might be possible for a registered clearing agency to obtain and store static data regarding a reporting person's SDR preferences, Rule 901(a)(3) requires the person having the duty to report a particular alpha transaction to ensure that the registered clearing agency learns the identity of the SDR that holds the record of the particular alpha. If the person with the duty to report attempts to satisfy this obligation with static data and the data

198 See ISDA/SIFMA Letter at 25; WMBAA Letter at 3.

199 WMBAA Letter at 3.

200 Id.

201 ISDA/SIFMA Letter at 25.

become stale or inaccurate with respect to a particular alpha, the reporting person would not satisfy its obligation under Rule 901(a)(3).

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

In the Regulation SBSR Adopting Release, the Commission described the interim phase for regulatory reporting and public dissemination,[202] under which security-based swap transactions may be reported up to 24 hours after the time of execution (or, if 24 hours after the time of execution would fall on a day that is not a business day, by the same time on the next day that is a business day).[203] However, the reporting timeframe for a life cycle event and any adjustment due to a life cycle event is within 24 hours after the occurrence of the life cycle event or the adjustment due to the life cycle event.[204] Thus, an alpha might be submitted for clearing immediately after execution but not reported until 24 hours later (or longer, if 24 hours after the time of execution would fall on a day that is not a business day), and the clearing agency's obligation under new Rule 901(e)(1)(ii) to inform the alpha SDR whether or not it has accepted the alpha for clearing could arise before the alpha SDR has received the alpha's initial transaction report.[205]

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202 See 80 FR at 14616-25.

203 See Rule 901(j). In the case of a security-based swap that is subject to regulatory reporting and public dissemination solely by operation of Rule 908(a)(1)(ii) (i.e., the security-based swap is accepted for clearing by a clearing agency having its principal place of business in the United States), Rule 901(j) requires reporting within 24 hours of the time of acceptance for clearing (or, if 24 hours after the time of acceptance would fall on a day that is not a business day, by the same time on the next day that is a business day).

204 See Rule 901(j).

205 To submit the report contemplated by new Rule 901(e)(1)(ii), the registered clearing agency must know the transaction ID of the alpha. The person with the duty to report the alpha might know the alpha's transaction ID before it reports the transaction to a registered SDR. Under existing Rules 903(a) and 907(a)(5) there is no requirement that a

To account for this possibility, the Commission proposed to amend existing Rule 901(e)(2) to require a life cycle event (which would include a notification by a registered clearing agency whether or not it has accepted an alpha for clearing) to be reported "to the entity to which the original security-based swap transaction will be reported or has been reported" (emphasis added). This amendment mirrors the language in new Rule 901(a)(3), which requires a person who reports an alpha to provide the registered clearing agency the alpha's transaction ID and the identity of the registered SDR to which the alpha "will be reported or has been reported."

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

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

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registered SDR itself assign a transaction ID. Under those rules, a registered SDR may allow third parties, such as reporting sides or platforms, to assign a transaction ID using a methodology endorsed by the registered SDR. If the registered SDR allows third parties to assign the transaction ID, the reporting side or platform could tell the registered clearing agency the alpha's transaction ID, which in turn could allow the registered clearing agency to report to the alpha SDR whether or not the alpha has been accepted for clearing before the alpha has been reported to the registered SDR. If, however, the person with the duty to report the alpha does not obtain the alpha's transaction ID until it reports the alpha to a registered SDR, the person could not provide the alpha's transaction ID to the registered clearing agency, and the registered clearing agency could not report whether or not it accepts the alpha for clearing until after it receives the alpha's transaction ID.

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

the termination message could not be applied to a corresponding alpha."[207] The Commission notes that it is not requiring a registered SDR to use a particular workflow to account for circumstances where the report of a life cycle event precedes the initial transaction report. Under Rule 901(e)(2), each registered SDR may use the workflow that it finds most effective, provided that it satisfies the requirements of the rule. A registered SDR generally should consider whether the policies and procedures it establishes under Rule 907(a) will address the situation where it receives a report from a registered clearing agency stating whether or not it has accepted an alpha (with a particular transaction ID) for clearing before the registered SDR receives a transaction report of the alpha. The policies and procedures could provide, for example, that the registered SDR would hold in a pending state a report from a registered clearing agency that it accepted the alpha for clearing until the SDR receives the alpha transaction report, and then disseminate the security-based swap transaction information and the fact that the alpha has been terminated as a single report.

The second commenter argued that Regulation SBSR should "prohibit [the alpha SDR] from publicly disseminating the rejection or acceptance report from the clearing agency ahead of the point at which the SDR receives and has publicly disseminated the report for the alpha."[208] While the Commission shares the commenter's concern that a "stand alone" termination not be publicly disseminated without the associated transaction report, the Commission does not believe that a new rule is necessary to avoid this result. Under existing rules, a registered SDR that receives a termination report of a security-based swap before it receives the initial transaction report cannot disseminate anything relating to the transaction. Existing Rule 902(a) requires this

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207 ICE Letter at 6.

208 ISDA/SIFMA Letter at 24.

result because it provides, in relevant part, that the public report "shall consist of all the information reported pursuant to [Rule 901(c)]." Because the registered SDR has not yet received the transaction report of the alpha, it would lack "all of the information reported" pursuant to Rule 901(c) and thus could not make the report required by Rule 902(a). If the registered SDR holds in queue the notice of the disposition of the alpha, it would be required—when it subsequently receives the initial alpha transaction report—to immediately disseminate the Rule 901(c) information pertaining to the alpha as well as the fact that the alpha has been terminated if the alpha has been accepted for clearing.[209]

J. Consequences of Rejection

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

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209 To address the case where an alpha is rejected from clearing, the Commission is adopting new Rule 902(c)(8), discussed in the subsection immediately below.

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

211 ISDA/SIFMA Letter at 24.

212 LCH.Clearnet Letter at 6.

213 See id.

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

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

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

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

217 A life cycle event is defined, in part, as "with respect to a security-based swap, any event that would result in a change in the information reported to a registered security-based swap data repository under Rule 901(c). . ." Rule 900(q). Because the resulting bilateral transaction would no longer be intended to be submitted to clearing, the reporting side would be required, among other things, to modify the information previously reported pursuant to Rule 901(c)(6) (whether or not the counterparties intend that the security-based swap be submitted to clearing).

registered SDR could, for example, provide in its policies and procedures that it would, in the absence of any information provided by the reporting side to the contrary or in the case of a platform-executed alpha, treat the clearing agency's rejection of the alpha as a termination of the alpha.

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

In this limited case, the Commission believes that no transaction report should be disseminated, and it is adopting a minor revision to existing Rule 902(c) to accomplish that end. Rule 902(c) lists the types of reported information and the types of security-based swap transactions that a registered SDR shall not publicly disseminate. The Commission is adding a new subparagraph (8) to Rule 902(c) to prohibit a registered SDR from disseminating "[a]ny information regarding a security-based swap that has been rejected from clearing or rejected by a prime broker[219] if the original transaction report has not yet been publicly disseminated."[220]

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218 See Regulation SBSR Adopting Release, 80 FR at 14616-25.

219 Because rejection by a prime broker has a similar effect to rejection by a clearing agency (i.e., it may result in termination of the initial transaction), the Commission is adopting language relating to prime broker transactions. See infra Section VII for additional discussion of prime broker transactions.

220 The Commission is also making minor technical corrections to subparagraphs (c)(6) and (c)(7) of Rule 902(c) to accommodate the addition of (c)(8). The Commission is deleting

New Rule 902(c)(8) is designed to avoid public dissemination of an alpha transaction that has been rejected by the clearing agency, if the original transaction report has not already been publicly disseminated by a registered SDR. Rule 902(c)(8) should help minimize public dissemination of events that do not reflect any ongoing market activity.[221]

New Rule 902(c)(8) applies only in cases of rejection prior to public dissemination of the original transaction report of the alpha. When the action of a registered clearing agency results in a termination of an alpha—whether because it was accepted by the clearing agency and replaced by the beta and gamma, or because it was rejected by the clearing agency—the termination of the alpha is a life cycle event of the alpha. If the registered SDR already has publicly disseminated the primary trade information of the alpha, the termination life cycle event also must be publicly disseminated. Rule 907(a)(3) requires a registered SDR to have policies and procedures for flagging the report to indicate that the report is a life cycle event to ensure that market observers can understand that the report represents a revision to a previous transaction.[222] A life cycle event is defined to include the termination of an alpha.

Rule 907(a)(4) requires the policies and procedures of a registered SDR, in relevant part, to identify characteristics of a security-based swap that could, in the fair and reasonable

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the word "or" from the end of (c)(6) and the period from the end of (c)(7) and adding "; or" to the end of subparagraph (c)(7).

221 As discussed in Section VII(D), infra, a similar situation could arise if a prime broker rejects a security-based swap that has been negotiated between a client and a third-party executing dealer. New Rule 902(c)(8) applies to security-based swaps that have been rejected by a registered clearing agency as well as those that have been rejected by a prime broker.

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

estimation of the registered SDR, cause a person without knowledge of those characteristics to receive a distorted view of the market and to apply condition flags to help prevent a distorted view of the market. The Commission believes that it would be difficult to comply with Rule 907(a)(4) if the condition flags do not provide sufficient information about the specific characteristics to prevent the report from distorting observers' view of the market, including by distinguishing between a termination that results from successful clearing and a termination that results from rejection from clearing. If market observers are not given the ability to distinguish between alphas that terminate because they are successfully cleared and alphas that terminate because they are rejected from clearing, there would be no means for market observers to avoid developing a distorted view of the market.[223] Separate flags for terminations that result from successful clearing of an alpha and terminations that result from rejection from clearing, both of which can be derived from the report of the alpha's clearing disposition provided by a registered clearing agency pursuant to Rule 901(e)(1)(ii), would be appropriate to prevent a distorted view of the market.

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

K. Scope of Clearing Transactions

One commenter expressed the view that the proposed rule does not address the reporting of trades that are part of a registered clearing agency's end-of-day pricing process.[224] The commenter recommended that these trades be reported by a clearing agency because the clearing agency is "the sole party who holds the necessary information to report trades resulting from downstream clearing processes."[225] In the Regulation SBSR Adopting Release, the Commission noted that the definition of "clearing transaction"—i.e., any security-based swap that has a clearing agency as a direct counterparty[226]—includes "security-based swaps that arise as part of a clearing agency's internal processes, such as security-based swaps used to establish prices for cleared products."[227] In this release, the Commission is adopting new Rule 901(a)(2)(i), as proposed, that makes a registered clearing agency the reporting side for any security-based swap to which it is a counterparty. Thus, a security-based swap that arises from a clearing agency's process for establishing a price for a cleared product must be reported by the registered clearing agency if it is a counterparty to the transaction. Otherwise, the transaction must be reported by the person determined by the reporting hierarchy in existing Rule 901(a)(2)(ii).

L. Reporting of Historical Clearing Transactions

One commenter requested that the Commission clarify that a registered clearing agency "is solely responsible for reporting historical SBS that are clearing transactions."[228] The Commission concurs with this statement. Existing Rule 901(i) provides that, with respect to any

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224 See ICE Letter at 9.

225 Id.

226 See Rule 900(g).

227 80 FR at 14599.

228 ISDA/SIFMA Letter at 26.

historical security-based swap, the reporting side shall report all of the information required by Rules 901(c) and 901(d) to the extent that information about the transaction is available. Under new Rule 901(a)(2)(i), the reporting side for a clearing transaction is the registered clearing agency that is a counterparty to the transaction. The Commission understands that all clearing agencies that are counterparties to historical security-based swaps are "deemed registered" clearing agencies.[229] Therefore, a registered clearing agency is the reporting side for every historical clearing transaction to which it is a counterparty and must report information about such transactions, to the extent that information is available.

This commenter also stated that "a clearing agency should not be expected to report the transaction ID of the alpha for an historical clearing transaction since such value may not be readily available."[230] The Commission notes that a registered clearing agency would not be the

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229 The Commission understands that ICE Clear Credit and ICE Clear Europe are the only registered clearing agencies that are counterparties to historical security-based swaps that fall within the definition of "clearing transaction" and thus would incur the duty to report those historical transactions. Both ICE Clear Credit LLC and ICE Clear Europe Limited were "deemed registered" in accordance with Title VII of the Dodd-Frank Act. See 15 U.S.C. 78q-1(l) (the "Deemed Registered Provision"). This provision applies to certain depository institutions that cleared swaps as multilateral clearing organizations and certain derivatives clearing organizations ("DCOs") that cleared swaps pursuant to an exemption from registration as a clearing agency. As a result, ICE Clear Credit LLC, ICE Clear Europe Limited, and the Chicago Mercantile Exchange, Inc. ("CME") were deemed registered with the Commission on July 16, 2011, solely for the purpose of clearing security-based swaps. In 2015 the Commission granted CME's request to withdraw its registration as a clearing agency. See Securities Exchange Act Release No. 76678 (December 17, 2015), 80 FR 79983 (December 23, 2015). In its request to withdraw from registration, the CME stated that it had never conducted any clearing activity for security-based swaps. See Letter from Larry E. Bergmann and Joseph C. Lombard, on behalf of CME, to Brent J. Fields, Secretary, Commission, dated August 3, 2015.

230 ISDA/SIFMA Letter at 26.

counterparty to an alpha transaction and thus would incur no duty to report any primary or secondary trade information about the alpha.[231]

IV. Reporting by Platforms

A. Overview

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

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

232 See Regulation SBSR Proposed Amendments Release, 80 FR at 14749-50.

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

After carefully considering all the comments, the Commission has determined to adopt Rule 901(a)(1) largely as proposed, but with minor revisions. The revisions, discussed further below, reduce the scope of information that platforms are required to report by eliminating the need for platforms to identify the participation of indirect counterparties. New Rule 901(a)(1) is

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

234 See DTCC Letter at 6; WMBAA Letter at 2.

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

236 DTCC Letter at 6, n. 14.

237 See ISDA/SIFMA at 27.

intended to promote the accuracy and completeness of security-based swap transaction data, while aligning the reporting duty with persons that are best able to carry it out. As the person with the duty to report the transaction, the platform would be able to select the registered SDR to which it reports.[238]

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

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

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

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238 This is consistent with the Commission's guidance in the Regulation SBSR Adopting Release that, for transactions subject to the reporting hierarchy, the reporting side may choose the registered SDR to which it makes the report required by Rule 901. See 80 FR at 14597-98.

239 WMBAA Letter at 2.

240 See ISDA/SIFMA Letter at 27 (agreeing with the Commission's approach of not requiring shared reporting of the same transaction and noting that "[u]nder the CFTC Rules, we have experienced the difficulty of a shared obligation for reporting a swap").

facilities would necessitate additional reporting by at least one of the sides.[241] As discussed in the subsection immediately below, the Commission believes that the transaction information germane to a platform-executed alpha can and should be reported by the platform.[242] However, a transaction that will not be submitted to clearing is more likely to include bespoke or more counterparty-specific data elements that would be more difficult for the platform to obtain from the counterparties and to report because such non-standardized transactions would not lend themselves to routinized reporting.[243] Rather than adopting an approach that would seek to identify each potential data element and to assign the duty to report it (as between the platform and one of the sides), the Commission instead is adopting an approach that requires the platform to report only those transactions executed on its system that will be submitted to clearing. In cases where a platform-executed transaction will not be submitted to clearing, existing Rule 901(a)(2)(ii) provides that one of the sides will have the duty to report, and this duty is not divided between the platform and the side.

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

242 Thus, the sides would have no duty to report anything except missing UICs, as required by existing Rule 906(a). In Rule 906(a), the Commission established a mechanism for obtaining missing UICs from non-reporting sides because it anticipated circumstances when they might be unable or unwilling to provide those UICs to the persons who have the initial reporting duty. See Regulation SBSR Adopting Release, 80 FR at 14644.

243 For example, an uncleared transaction between two counterparties executed on an SB SEF is likely to involve one or more bilateral agreements between the counterparties that govern other facets of their relationship, such as margining and collateral arrangements. The title and date of any such agreement that is incorporated by reference into a security-based swap contract must be reported pursuant to existing Rule 901(d)(4). The Commission does not believe that it would be appropriate to require a platform to obtain this information from the counterparties and to incur the duty for reporting it.

The commenter expressed concern that this approach could lead to confusion over reporting obligations when "it is uncertain whether the transaction will be cleared upon execution."[244] A platform can determine whether a particular security-based swap will be submitted to clearing implicitly through the product ID (e.g., if the security-based swap has a product ID of a "made available to trade" product or if the product ID otherwise specifies that the product will be submitted to clearing) or explicitly because the counterparties inform the platform of their intent.[245] Counterparties could signal to a platform that they intend to clear a particular security-based swap using communications infrastructure provided by the platform to submit transaction information to a registered clearing agency or by otherwise specifically informing the platform before or at the time of execution of their intent to submit the trade to clearing. Absent an implicit or explicit indication before or at the time of execution that a particular security-based swap will be submitted to clearing, the platform can reasonably conclude that the transaction will not be submitted to clearing and thus that the platform has no reporting obligation. Thus, if the direct counterparties do not inform the platform before or at the point of execution that they intend to submit the transaction to clearing, the platform incurs no duty to report. In that case, the reporting hierarchy in existing Rule 901(a)(2)(ii) would apply to

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244 WMBAA Letter at 2.

245 The Commission notes that the certain execution venues that are registered with the CFTC as swap execution facilities have adopted rules that require swap counterparties to designate whether or not a swap will be submitted to clearing. See MarketAxess SEF Rulebook, Rule 905, available at: http://www.marketaxess.com/pdfs/cds/MKTX_SEF_Rulebook_Effective_08-24-2015.pdf (last visited May 25, 2016); Bloomberg SEF Rulebook, Rule 533(a), available at: http://www.bbhub.io/professional/sites/4/BSEF-Rulebook-December-7-2015.pdf, (last visited May 25, 2016).

the security-based swap and the reporting side identified under Rule 901(a)(2)(ii) would be obligated to report the transaction.[246]

Furthermore, the Commission believes that another alternate approach—of requiring all platform-executed transactions, even those that will be submitted to clearing, to be reported by one of the sides and not imposing any reporting duties on platforms—is impractical. As the Commission has noted, platform-executed alphas can be executed anonymously.[247] Although some platform-executed transactions that will be submitted to clearing might not be executed anonymously, the Commission believes that it is more efficient to require the platform to report all security-based swaps executed on that platform that will be submitted to clearing, regardless of whether the counterparties are, in fact, anonymous to each other. The Commission believes that assigning the duty to report to the platform minimizes the number of reporting steps and thus minimizes the possibility of errors or delays in reporting the transaction to a registered SDR. Thus, the Commission believes that all platform-executed transactions that will be submitted to clearing should be reported by the platform. The Commission believes that this approach will be more efficient than if the platform had to assess on a transaction-by-transaction basis whether or not the counterparties are in fact unknown to each other.

C. Data Elements That a Platform Must Report

The Commission continues to believe that platforms should not be required to report information that they do not have or that it would be impractical for them to obtain. In the

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246 The Commission encourages platforms and their participants to develop protocols for determining in advance of execution whether a particular transaction will be submitted to clearing to minimize ambiguity regarding which person—the platform or one of the sides—will have the duty to report under Rule 901(a). If there is ambiguity regarding whether a particular transaction will be submitted to clearing, the counterparties are in the best position to resolve that ambiguity.

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

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

The Commission continues to believe that platforms will have or can readily obtain the primary trade information contemplated by Rules 901(c)(1)-(4). For example, the platform will have information that identifies the products that it offers for trading.[252] When a transaction is effected on the platform's facilities, the platform should have the ability to capture the price, the

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

249 ICE Letter at 4.

250 See ISDA/SIFMA Letter at 27.

251 The Commission also is making a minor revision to replace the phrase "the information required by" in proposed Rule 901(a)(1) with "the information set forth in" in final Rule 901(a)(1). This revision is designed to clarify that a platform that incurs a reporting duty under Rule 901(a)(1) must discharge that duty by reporting certain elements that are set forth in Rules 901(c) and 901(d).

252 See Rule 901(c)(1).

notional amount, and the date and time of execution.[253] As discussed in the subsection immediately above, platforms should be able to ascertain either implicitly (via the product traded) or explicitly (from the counterparties) whether the direct counterparties intend that the security-based swap will be submitted to clearing, as required by Rule 901(c)(6). If the direct counterparties do not inform the platform before or at the point of execution that they intend to submit the transaction to clearing, the platform incurs no duty under Rule 901(c)(6).[254]

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

The platform also can readily provide its own platform ID, as required by Rule 901(d)(9).

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

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253 See Rule 901(c)(2)-(4).

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

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

Existing Rule 901(c)(5) requires reporting of whether both sides of a security-based swap include a registered security-based swap dealer. One of the commenters who argued for the removal of the requirement for platforms to report indirect counterparties also noted that it would

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

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

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

D. Platform Duty to Report Secondary Trade Information

Final Rule 901(a)(1) makes clear that the only secondary trade information that a platform must report is the counterparty ID of each direct counterparty (or execution agent, if applicable);[259] the platform ID;[260] and the transaction ID of the prior security-based swap if the platform-executed security-based swap results from the allocation, termination, novation, or assignment of the prior transaction.[261]

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257 See ISDA/SIFMA Letter at 27.

258 See SBS Entity Registration Adopting Release, 80 FR at 48972 ("The Commission intends to notify entities electronically through the EDGAR system when registration is granted, and will make information regarding registration status publicly available on EDGAR").

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

260 See Rule 901(d)(9).

261 See Rule 901(d)(10).

One commenter expressed concern about a platform having to report other secondary trade information, such as the title and date of any agreements incorporated by reference into the security-based swap contract.[262] Rule 901(a)(1), both as proposed and as adopted, requires a platform to report only the secondary trade information specifically enumerated in the rule. The agreements contemplated by Rule 901(d)(4) are not so enumerated.[263]

E. Platform Has No Duty to Report Life Cycle Events

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

Existing Rule 901(e)(1)(i) provides that most life cycle events (and adjustments due to life cycle events) must be reported by the reporting side. A platform is not a counterparty to a security-based swap and thus cannot be a reporting side. Therefore, existing Rule 901(e)(1)(i), by its terms, imposes no duty on platforms to report life cycle events. Furthermore, Rule 901(e)(1) includes one exception to the general rule that the reporting side must report life cycle events: new subparagraph (ii), as adopted today, requires the registered clearing agency to which the platform-executed alpha is submitted to report to the alpha SDR whether or not it has accepted a security-based swap for clearing. The Commission believes that these are the only life cycle events germane to a platform-executed alpha—the transaction will either be terminated

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262 See WMBAA Letter at 4 (referencing requirement in Rule 901(d)(4)).

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

264 See WMBAA Letter at 4.

because it is accepted for clearing or terminated because it is rejected from clearing—and therefore is not imposing any requirement on the platform or either of the sides to report additional types of life cycle events for platform-executed alphas.

F. Implementation Issues

One commenter encouraged the Commission "to allow the use of existing reporting technology and reporting architecture to reduce the amount of additional technology investment required to comply" with any reporting obligations.[265] This commenter further requested that the Commission "make clear in its final rules that platforms have discretion to determine the most appropriate technological manner in which they comply with the Commission's rules."[266] The Commission has been sensitive to the current state of the security-based swap industry and, in particular, the technological baseline that is utilized by market participants and infrastructure providers to carry out business and regulatory functions. The Commission has sought to adopt final rules that minimize changes to systems and processes so far as they can be adapted to new reporting duties, while recognizing that new systems or processes, or fairly significant revisions to existing systems or processes, might be necessary in some cases.

The Commission acknowledges that Rule 901(a)(1) will require platforms to develop, test, implement, and maintain technology to ensure connectivity to at least one registered SDR.[267] Rule 901(a)(1) does not specify the reporting technology or reporting architecture for platforms to use, and platforms may use their existing technology and architecture to reduce the amount of additional technology investment required to comply with the rule. Moreover, the

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265 See WMBAA Letter at 3.

266 Id.

267 See WMBAA Letter at 3.

Commission affirms that platforms may retain third-party service providers to facilitate compliance with their reporting obligations. The Commission notes that platforms are no different from other persons having a duty to report that elect to use an agent to carry out that function; the person with the reporting duty would retain responsibility under Regulation SBSR for providing the required information in the required format.[268]

Finally, this commenter also urged the Commission to "clearly outline the specific data fields, and permissible formats for reporting those data fields, required for post-trade reporting."[269] When it adopted Regulation SBSR, the Commission took the approach of generally requiring reporting of general categories of data (such as the "price"[270]) while requiring registered SDRs to establish and maintain written policies and procedures that specify the manner in which persons having a duty to report must provide security-based swap transaction data to the SDR.[271] In the Regulation SBSR Adopting Release, the Commission considered whether to prescribe formats for the data elements required by Regulation SBSR, and concluded that "it is neither necessary or appropriate to mandate a fixed schedule of data elements to be reported, or a single format or language for reporting such elements to a registered SDR."[272] In the Regulation SBSR Proposed Amendments Release, the Commission did not propose a new

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

269 WMBAA Letter at 2.

270 See Rule 901(c)(3).

271 See Rules 907(a)(1) and 907(a)(2). The Commission did, however, require reporting of some specific data elements. See, e.g., Rule 901(c)(6) (requiring reporting of whether the direct counterparties intend that the security-based swap will be submitted to clearing); Rule 901(d)(9) (requiring reporting of the platform ID, if applicable).

272 80 FR at 14595. The Commission noted, furthermore, that new security-based swap products are likely to develop over time and a rule establishing a fixed schedule of data elements could become obsolete as new data elements might become necessary to reflect material economic terms of new security-based swap products. See id.

approach for specifying how the required data elements must be reported to a registered SDR, and declines to adopt a new approach here.[273]

G. Reporting Duty Applies Even to Unregistered Platforms

New Rule 901(a)(1) imposes a reporting duty on any "platform" if a security-based swap that will be submitted to clearing is executed on the platform. One commenter requested the Commission to clarify "whether an alpha SBS entered into via an execution venue in advance of its registration or exemption as a national securities exchange or security-based swap execution facility is required to be reported to one of the sides."[274] The commenter stated that "[i]deally the registration or exemption of platforms would precede the compliance date for reporting under [Regulation] SBSR. Otherwise, the industry will need to transition the reporting responsibility which may lead to gaps or duplications in reporting since the relevant static data and any system architectural changes will not occur simultaneously."[275] The commenter argued, in the alternative, that "the Commission should exempt alphas from reporting in advance of platform registration."[276] A second commenter stated that it "is uncertain as to how the reporting obligations for a platform under Regulation SBSR would be fulfilled if the compliance dates are triggered before the Commission implements SB swap trading rules."[277]

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273 The Commission notes, however, that it has proposed an amendment to Rule 13n-4(a)(5) under the Exchange Act, 17 CFR 240.13n-4(a)(5), that would specify the form and manner with which SDRs will be required to make security-based swap data available to the Commission. See Securities Exchange Act Release No. 76624 (December 11, 2015), 80 FR 79757 (December 23, 2015).

274 ISDA/SIFMA Letter at 28.

275 Id.

276 Id.

277 WMBAA Letter at 5.

In the Regulation SBSR Adopting Release, the Commission explained that there are certain entities that currently meet the definition of "security-based swap execution facility" but that are not yet registered with the Commission and will not have a mechanism for registering as SB SEFs until the Commission adopts final rules governing the registration and core principles of SB SEFs. These entities currently operate pursuant to an exemption from certain provisions of the Exchange Act.[278] To ensure that transactions that occur on such exempt SB SEFs are captured by Regulation SBSR, existing Rule 900(v) defines "platform" as "a national securities exchange or security-based swap execution facility that is registered or exempt from registration" (emphasis added). Therefore, the Commission does not believe that it is necessary, as the commenter suggests, to transfer reporting duties from the platform to one of the sides, or to exempt alphas from reporting entirely, until the Commission adopts registration rules for SB SEFs. Doing so could significantly delay the benefits of regulatory reporting and public dissemination of platform-executed alpha transactions. Furthermore, the Commission understands that, although platforms for security-based swaps might not yet be registered with the Commission, they likely already possess significant post-trade processing capabilities because of their activities in the swaps market, which subjects them to reporting duties under CFTC rules.[279] In any event, unregistered platforms will have an extended period in which to prepare for their reporting duties under Regulation SBSR, as new transactions in an asset class

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278 See Securities Exchange Act Release No. 64795 (July 1, 2011), 76 FR 39927 (July 7, 2011). In this order, the Commission granted entities that meet the statutory definition of "exchange" solely due to their activities relating to security-based swaps a temporary exemption from the requirement to register as a national securities exchange in Sections 5 and 6 of the Exchange Act, 15 U.S.C. 78e and 78f. This included entities that would meet the statutory definition of "security-based swap execution facility" but that otherwise would not be subject to the requirements under Sections 5 and 6 of the Exchange Act.

279 See 17 CFR 43.8(h) (reporting by SEF or designated contract market).

will not have to be reported until at least six months after the first SDR that can accept transactions in that asset class registers with the Commission.[280]

V. Additional Matters Concerning Platforms and Registered Clearing Agencies

A. Extending "Participant" Status

Existing Rule 901(h) requires "a reporting side" to electronically transmit the information required by Rule 901 in a format required by the registered SDR. In the Regulation SBSR Proposed Amendments Release, the Commission proposed to replace the term "reporting side" in Rule 901(h) with the phrase "person having a duty to report." Under Rule 901(a), as amended by this release, a platform or registered clearing agency might incur a reporting duty even if it is not one of the sides to the transaction.[281] All persons who have a duty to report under Regulation SBSR—i.e., platforms, reporting sides, and registered clearing agencies that must report whether or not a security-based swap is accepted for clearing—must electronically transmit the information required by Rule 901 in a format required by the registered SDR. Replacing "reporting side" with "person having the duty to report" in Rule 901(h) extends this requirement to all persons with reporting duties, even if they are not one of the sides. The Commission received no comments that specifically addressed the amendment to Rule 901(h)[282] and is adopting this amendment as proposed.

Under existing Rule 900(u), platforms and registered clearing agencies would not be participants of registered SDRs solely as a result of having a duty to report security-based swap

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280 See infra Section X (discussing compliance dates).

281 The Commission proposed to expand Rule 908(b) to include all platforms and registered clearing agencies. This amendment to Rule 908(b) is discussed in Section IX, infra.

282 But see ISDA/SIFMA Letter at 29 (endorsing a similar amendment to Rule 905(a)(1) that expands that rule from "the reporting side" to "the person having the duty to report").

transaction information pursuant to Rule 901(a)(1) or 901(e)(1)(ii), respectively.[283] In the Regulation SBSR Proposed Amendments Release, the Commission expressed the preliminary view that platforms and registered clearing agencies should be participants of any registered SDR to which they report security-based swap transaction information on a mandatory basis. Consistent with this view, the Commission proposed to amend the definition of "participant" in Rule 900(u) to include a platform that is required to report a security-based swap pursuant to Rule 901(a)(1) or a registered clearing agency that is required to report a life cycle event pursuant to Rule 901(e)(1)(ii).[284]

One commenter expressed general support for requiring platforms and clearing agencies to become participants of the registered SDRs to which they report.[285] A second commenter agreed that a clearing agency or platform must be a participant of a registered SDR to which it reports to ensure that reports are submitted in a format required by the registered SDR.[286] The second commenter, however, also expressed its understanding "that in this context, participant means a registered user of an SDR, submitting data in the format as requested by the SDR, rather

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

284 A registered clearing agency that is required to report a clearing transaction pursuant to Rule 901(a)(2)(i) is a counterparty to that security-based swap and is thus covered by the existing definition of "participant."

285 See DTCC Letter at 5-6, 17 (stating that "the clearing agency should become an onboarded participant of the SB SDR and adhere to the policy and procedures to report data in the format required by the SB SDR. In this regard, separate accommodations should not be made for clearing agencies, which should be required to comply with an SB SDR's policies and procedures to the same extent as other market participants").

286 See ISDA/SIFMA Letter at 24, 27.

than a 'participant' as defined in Final SBSR."[287] A third commenter agreed that platforms should be required to report transaction data to a registered SDR "in a format required by that registered SDR"; however, the commenter "does not believe that it should be required to become a member of an SDR."[288] A fourth commenter stated that, although a clearing agency "should execute an agreement outlining the requirements to report termination messages" to the alpha SDR, the clearing agency should not become a full participant of the alpha SDR because it is not a counterparty to the alpha.[289] This commenter also argued that the clearing agency "should not incur SDR fees to report alpha termination messages."[290]

After carefully considering the comments, the Commission is adopting the amendment to Rule 900(u) as proposed. Conferring "participant" status on these additional entities subjects them to the requirement in Rule 906(c), as amended herein,[291] for enumerated participants to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that they comply with any obligations to report information to a registered SDR in a manner consistent with Regulation SBSR. The Commission believes that these policies and procedures will increase the accuracy and reliability of information reported to registered SDRs. Without written policies and procedures for carrying out their reporting obligations, clearing agencies and the other entities enumerated in Rule 906(c), as amended, might depend too heavily on key individuals or ad hoc and unreliable processes. Written policies and procedures, however, can be shared throughout an organization and generally should be independent of any

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287 Id. at 24.

288 WMBAA Letter at 4.

289 ICE Letter at 6.

290 Id.

291 See infra Section V(E).

specific individuals. Requiring clearing agencies, as well as the other participants enumerated in Rule 906(c), to adopt and maintain written policies and procedures relevant to their reporting responsibilities should help to improve the degree and quality of overall compliance with the reporting requirements of Regulation SBSR. Periodic review of these policies and procedures, as required by Rule 906(c), should help to ensure that these policies and procedures remain well-functioning over time.

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

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

[293] See supra note 191 and accompanying text. However, an SDR must offer fair, open, and not unreasonably discriminatory access to users of its services and ensure that any fees that it charges are fair and reasonable and not unreasonably discriminatory. See Rules

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

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

- Example 1. A registered security-based swap dealer enters into a security-based swap with a private fund. The transaction is not executed on a platform. The counterparties intend to clear the transaction (i.e., the transaction is an alpha). Neither side has a guarantor with respect to the alpha, and both direct counterparties are U.S. persons.
  - The registered security-based swap dealer is the reporting side under existing Rule 901(a)(2)(ii) and must report this alpha transaction to a registered SDR (and may choose the registered SDR).
  - New Rule 901(a)(3) requires the registered security-based swap dealer, as the reporting side of the alpha transaction, to promptly provide to the registered clearing agency the transaction ID of the alpha and the identity of the alpha SDR.
  - If the registered clearing agency accepts the alpha for clearing and terminates the alpha, two clearing transactions—a beta (between the registered security-based swap dealer and the registered clearing agency)

13n-4(c)(1)(i) and 13n-4(c)(1)(iii) under the Exchange Act, 17 CFR 240.13n-4(c)(1)(i) and 240.13n-4(c)(1)(iii).

294 Because clearing of security-based swaps in the United States is still evolving, other models of clearing might emerge where customers would not become direct counterparties of a registered clearing agency. See supra Section III(A)(1) (discussing the clearing process in the United States).

and a gamma (between the registered clearing agency and the private fund)—take its place.

- New Rule 901(e)(1)(ii) requires the registered clearing agency to report to the alpha SDR that it accepted the transaction for clearing.
- Under new Rule 901(a)(2)(i), the registered clearing agency is the reporting side for each of the beta and the gamma. Therefore, the registered clearing agency must report the beta and gamma to a registered SDR (and the clearing agency may select the registered SDR). The report for each of the beta and the gamma must include the transaction ID of the alpha, as required by existing Rule 901(d)(10).

- Example 2. Same facts as Example 1, except that the private fund and the registered security-based swap dealer transact on an SB SEF.
  - New Rule 901(a)(1) requires the SB SEF to report the alpha transaction (and allows the SB SEF to choose the registered SDR).
  - After the alpha has been submitted to clearing, new Rule 901(a)(3) requires the SB SEF to promptly report to the registered clearing agency the transaction ID of the alpha and the identity of the alpha SDR.
  - Once the alpha is submitted to clearing, the reporting workflows are the same as in Example 1.

C. Amendments to Rule 905(a)

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

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

Under the proposed amendment to Rule 905(a)(1), a person that is not the reporting side who discovers an error in a previously submitted security-based swap would be required to promptly notify "the person having the duty to report" of the error. Under the proposed amendment to Rule 905(a)(2), "the person having the duty to report" a security-based swap would be required to correct previously reported erroneous information with respect to that

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

296 See Regulation SBSR Adopting Release, 80 FR at 14681.

security-based swap if it discovers an error or if it receives notification of an error from a counterparty. Four commenters expressed general support for the proposed amendments to Rule 905(a).[297]

After carefully considering the comments received, the Commission is adopting the amendments to Rule 905(a) as proposed. The Commission believes that, in light of the amendments to Rule 901(a) that also are being adopted today,[298] Rule 905(a) is necessary to account for the possibility that a person who is not a counterparty and is thus not on either side of the transaction could have a duty to report. Thus, a platform or registered clearing agency (when the clearing agency is reporting whether or not it has accepted an alpha for clearing and thus is not the reporting side of the alpha) can incur a duty to report a correction, because it also can incur the initial duty to report the relevant information.

One commenter, discussing general difficulties in making non-reporting sides become "onboarded users" of registered SDRs, stated that only reporting sides—who presumably would be onboarded users—should be responsible for amending errors and omissions associated with previously submitted security-based swaps.[299] The Commission agrees that the person having the duty to report the initial transaction should be responsible for amending errors and omissions. There is no scenario under Rule 905(a), as amended, in which a non-reporting side must report

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

298 See supra Section II(B).

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

anything to a registered SDR. If a non-reporting side discovers an error, Rule 905(a)(1) requires the non-reporting side to inform the person who had a duty to report the initial transaction—which could be a platform, a registered clearing agency, or the reporting side—not the registered SDR.

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

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300 LCH.Clearnet Letter at 11.

301 See supra Section III(E) (discussing clearing process in the agency model of clearing); infra Section VII(B) (discussing prime brokerage workflows).

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

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

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

The Commission also proposed to make a similar amendment to existing Rule 907(a)(6), which requires a registered SDR to have policies and procedures "[f]or periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and counterparty

302 See Regulation SBSR Adopting Release, 80 FR at 14645.

303 See LCH.Clearnet Letter at 11; ISDA/SIFMA Letter at 29; WMBAA Letter at 5.

IDs." The Commission proposed to amend Rule 907(a)(6) to require registered SDRs to have policies and procedures to obtain this information from each participant "other than a platform or a registered clearing agency." One commenter supported the Commission's proposal.[304] The Commission continues to believe that this amendment to Rule 907(a)(6) is appropriate and is adopting the amendment as proposed.

One commenter asked the Commission to exclude from Rule 906(b) transactions that include an execution agent ID.[305] The commenter stated: "Aggregation across affiliated entities under a common parent makes the most sense from a regulatory or systemic risk perspective where there is coordinated trading activity and/or the risk of such swap positions is borne by the parent under an explicit or implicit guarantee. In the context of asset management, neither is typically present. For separate account clients, virtually all the asset management assignments undertaken by our members are on a discretionary basis . . . As a result, the separate account client (let alone its affiliates or parent) would not be responsible under its trading contracts for trading losses incurred by a manager acting on its behalf beyond the assets it has provided to that manager."[306]

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

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

306 Id. at 3-4. See also id. at 4 ("There is even less reason to require identification of the affiliates or parent of a collective investment vehicle. While funds in the same complex could be viewed as affiliated for certain purposes, aggregating swap positions across

Rule 906(b) is designed to facilitate the Commission's ability to measure security-based swap exposure within the same ownership group. The Commission believes that requiring the funds and accounts described in the commenter's letter to report parent and affiliate information would not serve this goal. Accordingly, the Commission is amending Rule 906(b) to exclude externally managed investment vehicles from the requirement to provide ultimate parent and affiliate information to any registered SDR of which it is a participant.[307] The Commission is not acting upon the commenter's specific suggestion to base an exclusion on the fact that the transaction reports submitted by a fund includes an ID of an execution agent. There could be situations where a corporate entity within a group that Rule 906(b) is designed to cover might use an execution agent and thus would be required to report an execution agent ID. Therefore, basing an exclusion from Rule 906(b) on the use of an execution agent ID would be broader than necessary. The Commission believes instead that an exclusion for externally managed investment vehicles is well tailored to satisfy the concerns raised by the commenter while minimizing the risk of unduly broadening the exclusion. In light of this amendment to Rule 906(b), the Commission is making a conforming change to Rule 907(a)(6). Under Rule

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funds where recourse is legally and contractually limited would be misleading from a systemic risk and regulatory oversight perspective").

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

907(a)(6), as amended, a registered SDR need not include in its policies and procedures for obtaining ultimate parent and affiliate information a mechanism for obtaining such information from externally managed investment vehicles.

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

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

Existing Rule 906(c) requires each participant of a registered SDR that is a registered security-based swap dealer or registered major security-based swap participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that the participant complies with any obligations to report information to a registered SDR in a manner consistent with Regulation SBSR. Rule 906(c) also requires each registered security-based swap dealer and registered major security-based swap participant to review and update its policies and procedures at least annually.

In the Regulation SBSR Proposed Amendments Release, the Commission proposed to extend the requirements of Rule 906(c) to registered clearing agencies and platforms that are participants of a registered SDR.[308] Four commenters generally supported this amendment.[309]

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[308] See 80 FR at 14759.

In the U.S. Activity Proposal, the Commission proposed to extend the requirements of Rule 906(c) to any registered broker-dealer that incurs reporting obligations solely because it effects transactions between two unregistered non-U.S. persons that do not fall within proposed Rule 908(b)(5). The Commission received no comments regarding the proposed amendment to Rule 906(c) for registered broker-dealers. The Commission continues to believe that this amendment is appropriate and is adopting the amendment as proposed.[310]

One commenter stated that the Commission should expand Rule 906(c) "to include all parties with reporting obligations under Regulation SBSR, including platforms and registered clearing agencies."[311] While the Commission is expanding Rule 906(c) to include platforms and registered clearing agencies, the Commission did not propose and is not adopting any amendment to expand Rule 906(c) to include "all parties" with reporting obligations under Regulation SBSR, which would include unregistered persons. Regulation SBSR was designed to minimize, to the extent feasible, instances where unregistered persons have the primary duty to report security-based swaps; an unregistered person that is a participant of a registered SDR in most cases will have only limited duties under Regulation SBSR, such as the duty to report UIC information pursuant to Rule 906(a).[312] The Commission does not believe that it is appropriate

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

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

311 LCH.Clearnet Letter at 11.

312 Existing Rule 906(a) applies to all participants of a registered SDR, including a participant that is the non-reporting side of a security-based swap reported to the registered SDR on a mandatory basis. Rule 906(a), in relevant part, requires a participant

to require unregistered persons to establish policies and procedures to support this limited reporting function.

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

A. Background

The Regulation SBSR Adopting Release provides guidance for the reporting of certain security-based swaps executed by an asset manager on behalf of multiple clients—transactions involving what are sometimes referred to as "bunched orders."[313] That release explained how Regulation SBSR applies to executed bunched orders that are subject to the reporting hierarchy in existing Rule 901(a)(2)(ii), including bunched order alphas that are not executed on a platform and platform-executed bunched orders that will not be submitted to clearing. That release also

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of a registered SDR, with respect to a transaction to which it is a direct counterparty, to provide the SDR with any UICs that the SDR lacks, including a counterparty ID "or (if applicable), the broker ID, branch ID, execution agent ID, desk ID, and trader ID." In the Regulation SBSR Adopting Release, the Commission explained why it adopted the term "trading desk" and "trading desk ID" rather than, as in earlier proposed versions, "desk" and "desk ID." See 80 FR at 14583-84. However, in one place in Rule 906(a), the Commission failed to revise the term "desk ID" to "trading desk ID" even though it had done so in another place in Rule 906(a). Therefore, the Commission in this release is adopting a technical correction to Rule 906(a) to utilize the term "trading desk ID" in both places. In addition, one commenter requested clarification "that trading desk ID and trader ID fields are not applicable (or 'N/A') for trades entered into by an execution agent." SIFMA-AMG II at 2. Based on the rule text, the Commission believes that this is a reasonable interpretation of Rule 906(a).

313 See Regulation SBSR Adopting Release, 80 FR at 14625-27. 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 May 25, 2016); "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 May 25, 2016).

explained how Regulation SBSR applies to the security-based swaps that result from allocation of an executed bunched order, if the resulting security-based swaps are uncleared.

As described in the Regulation SBSR Adopting Release, to execute a bunched order, an asset manager negotiates and executes a security-based swap with a counterparty, typically a security-based swap dealer, on behalf of multiple clients. The bunched order can be executed on- or off-platform. After execution of the bunched order, the asset manager allocates a fractional amount of the aggregate notional amount of the transaction to each of several clients, thereby creating several new security-based swaps and terminating the bunched order execution.[314] By executing a bunched order, the asset manager avoids having to negotiate the client-level transactions individually, and obtains exposure for each client on the same terms (except, perhaps, for size).

In the Regulation SBSR Adopting Release, the Commission explained that Rule 901 requires a bunched order execution and the security-based swaps resulting from the allocation of the bunched order execution, if they are not cleared, to be reported like other security-based swaps.[315] The Commission further explained that Rule 902(a) requires the registered SDR that receives the report required by Rule 901 to disseminate the information enumerated in Rule 901(c) for the bunched order execution, including the full notional amount of the transaction. The Commission observed that publicly disseminating bunched order executions in this manner would allow the public to "know the full size of the bunched order execution and that this size

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314 In aggregate, the notional amount of the security-based swaps that result from the allocation is the same as the notional amount of the executed bunched order. However, as one commenter noted, "due to cross-border considerations the aggregate notional of a bunched order will not always tie out completely in reported SBSR data to the sum of the notional of its related allocations." See ISDA/SIFMA Letter at 28.

315 See 80 FR at 14625.

was negotiated at a single price."[316] Existing Rule 902(c)(7) provides that a registered SDR shall not publicly disseminate any information regarding the allocation of a bunched order execution, which would include information about the security-based swaps resulting from the allocation of the initial transaction as well as the fact that the bunched order execution is terminated following this allocation.

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

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

316 Id. at 14626.

317 See 80 FR at 14753-55.

providing guidance for how bunched order executions and related allocations are to be reported when they are cleared.

1. Example 1: Off-Platform Cleared Transaction

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

a. Reporting the Bunched Order Alpha

The reporting hierarchy of existing Rule 901(a)(2)(ii) applies to the bunched order alpha because the execution does not occur on a platform and the bunched order alpha is not a clearing transaction. Under existing Rule 901(a)(2)(ii)(B), the registered security-based swap dealer is the reporting side for the bunched order alpha because its side includes the only registered security-based swap dealer. As the reporting side, the registered security-based swap dealer must report the primary and secondary trade information for the bunched order alpha to a registered SDR (the "alpha SDR") of its choice within 24 hours after the time of execution. Rule 902(a) requires the alpha SDR to publicly disseminate a transaction report of the bunched order alpha immediately upon receiving the report from the registered security-based swap dealer.[318]

When the registered security-based swap dealer submits the bunched order alpha to a registered clearing agency for clearing, Rule 901(a)(3), as adopted today, requires the registered security-based swap dealer promptly to provide the registered clearing agency with the transaction ID of the bunched order alpha and the identity of the alpha SDR. This requirement

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

facilitates the registered clearing agency's ability to report whether or not it has accepted the bunched order alpha for clearing, as required by Rule 901(e)(1)(ii), which also is being adopted today.

b. Reporting the Security-Based Swaps Resulting From Allocation

New Rule 901(a)(2)(i) requires the registered clearing agency to report all clearing transactions that arise as a result of clearing the bunched order alpha, regardless of the workflows used to clear the bunched order alpha.[319]

If the asset manager provides allocation instructions prior to or contemporaneous with the clearing of the bunched order alpha, clearing could result in the creation of a beta (i.e., the clearing transaction between the registered clearing agency and the security-based swap dealer) and a "gamma series" (i.e., the gammas between the registered clearing agency and each of the client accounts selected by the asset manager to receive a portion of the initial notional amount). The beta and each security-based swap that comprises the gamma series would not be treated differently under Regulation SBSR than any other clearing transactions.

If the asset manager does not provide allocation instructions until after the bunched order alpha is cleared, clearing could result in the creation of a beta (i.e., the clearing transaction between the registered clearing agency and the security-based swap dealer) and an "intermediate gamma" (i.e., the clearing transaction between the clearing agency and the side representing the clients of the asset manager). The beta would be the same—and would be treated the same—as any other clearing transaction, while the intermediate gamma would continue to exist until the

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319 Like other clearing transactions that arise from the acceptance of a security-based swap for clearing, these security-based swaps are not subject to public dissemination. See Rule 902(c)(6). See also Rule 902(c)(7) (exempting from public dissemination any "information regarding the allocation of a security-based swap").

registered clearing agency receives the allocation information, which could come from the asset manager or its clearing member and would allow for the creation of the gamma series. The registered clearing agency would report the intermediate gamma to a registered SDR of its choice. As the registered clearing agency receives the allocation information, it would terminate the intermediate gamma and create new security-based swaps as part of the gamma series. The partial terminations of the intermediate gamma would be life cycle events of the intermediate gamma that the registered clearing agency must report under existing Rule 901(e)(1)(i). Existing Rule 901(e)(2) requires the registered clearing agency to report these life cycle events to the same registered SDR to which it reported the intermediate gamma. Under new Rule 901(a)(2)(i), as adopted today, the registered clearing agency also is required to report to a registered SDR each new security-based swap comprising part of the gamma series. Because these security-based swaps arise from the termination (or partial termination) of an existing security-based swap (i.e., the intermediate gamma series), existing Rule 901(d)(10) requires the registered clearing agency to link each new transaction in the gamma series to the intermediate gamma by including the transaction ID of the intermediate gamma as part of the report of each new security-based swap in the gamma series.

2. Example 2: Cleared Platform Transaction

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

a. Reporting the Bunched Order Alpha

Because the initial transaction is executed on a platform and will be submitted to clearing, the platform would have the duty under Rule 901(a)(1), as adopted today, to report the bunched order alpha to a registered SDR. To satisfy this reporting obligation, the platform must

provide the information required by Rule 901(a)(1). Even if the platform does not know and thus cannot report the counterparty IDs of each account that will receive an allocation, the platform would know the identity of the execution agent who executed the bunched order alpha on behalf of its advised accounts. The platform, therefore, would report the execution agent ID of the execution agent, even though it might not know the intended counterparties of the security-based swaps that will result from the allocation.[320] Existing Rule 902(a) requires the registered SDR that receives the report of the bunched order alpha from the platform to publicly disseminate a report of the bunched order alpha. Then, pursuant to existing Rule 906(a), the registered SDR would be required to obtain any missing UICs from its participants.[321]

b. Reporting the Security-Based Swaps Resulting From Allocation

If the asset manager provides allocation instructions prior to or contemporaneous with the clearing of the bunched order alpha, clearing would (under the agency model of clearing) result in the creation of a beta (i.e., the clearing transaction between the registered clearing agency and

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

321 One commenter stated that a registered SDRs will be unable to compel non-reporting sides to become "onboarded users" of the SDR; the commenter recommended, therefore, that the Commission require any reports, such as those required by Rule 906(a), "to only be provided to onboarded users." DTCC/ICE/CME Letter at 2. In the Regulation SBSR Adopting Release, the Commission resolved the issue of whether a non-reporting side becomes a participant of a registered SDR: it does, if the non-reporting side falls within Rule 908(b) and the transaction was reported to the registered SDR on a mandatory basis. See Regulation SBSR Adopting Release, 80 FR at 14645 ("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").

the registered security-based swap dealer) and a "gamma series" (i.e., the gammas between the clearing agency and each of the asset manager's clients). The beta and each security-based swap that comprises the gamma series would be no different—and would not be treated differently under Regulation SBSR—from other clearing transactions.

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

C. Comments Received

The Commission received two comments that generally supported the guidance on the proposed rules for the reporting and public dissemination of a bunched order execution that is executed on a platform and will be submitted to clearing, and the security-based swap clearing transactions that result from the allocation.[322]

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322 See ISDA/SIFMA Letter at 28 (supporting "the requirement for a reporting side to report a bunched order executed off-platform, proposed rule 901(a)(1) that would require a platform to report a bunched order alpha executed on its facility, and proposed rule 901(a)(2)(i) that would require a registered clearing agency to report a cleared bunched order, if applicable, and the allocations that result from the cleared bunched order" and stating that "a bunched order should be subject to public dissemination instead of the related allocations"); ICE Trade Vault Letter at 7 (supporting inclusion of the transaction

One of these commenters raised concerns, however, about the application of the guidance to cross-border situations where the identity of the asset manager's clients (i.e., the direct counterparties to the security-based swaps that result from the allocation) is not known at the time of bunched order execution, particularly if the Commission requires compliance with Regulation SBSR before security-based swap dealers have had the opportunity to register with the Commission as such.[323] The commenter stated that "the Commission should be aware that in advance of dealer registration determining whether a bunched order is subject to reporting under SBSR can only be based on the reporting side's understanding of the execution agent's status as a U.S. person. The U.S. person status of the funds to which the bunched order will be allocated will determine whether the allocations are subject to reporting and will have no bearing on whether the bunched order is reported."[324] The Commission shares the commenter's concern that there be clear and workable solutions for reporting transactions under Regulation SBSR even under complex cross-border scenarios. The Commission also notes that, as discussed below,[325] compliance with Regulation SBSR will be required independent of when security-based swap dealers register as such with the Commission.

In the U.S. Activity Proposal, the Commission proposed a new subparagraph (v) to existing Rule 908(a)(1) that would subject to regulatory reporting and public dissemination any transaction in connection with a non-U.S. person's security-based swap dealing activity that is arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch

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ID of the bunched order execution on each security-based swap resulting from its allocation as a "critical data element necessary to improve data quality").

323 See ISDA/SIFMA Letter at 28.

324 Id.

325 See infra Section X(C).

or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office (an "ANE transaction"). New Rule 908(a)(1)(v)—which is being adopted today[326]—coupled with the existing provisions of Rule 908(a)(1), will further clarify how the guidance discussed above applies to various cross-border scenarios, as illustrated in the following examples:

- If the dealing entity who executes the bunched order with the asset manager/execution agent is a U.S. person, whether registered or unregistered, the bunched order execution is subject to both regulatory reporting and public dissemination because of the U.S.-person status of the dealing entity, regardless of the U.S.-person status of the asset manager/execution agent or of the funds/accounts that later receive allocations.
- If the dealing entity who executes the bunched order with the asset manager is a non-U.S. person but the bunched order execution is an ANE transaction, the bunched order execution is again subject to both regulatory reporting and public dissemination, regardless of the U.S.-person status of the asset manager/execution agent or of the funds/accounts that later receive allocations.
- If all of the funds/accounts that could be eligible to receive allocations are U.S. persons, the bunched order execution is subject to both regulatory reporting and public dissemination because of the U.S.-person status of the funds/accounts, regardless of the U.S.-person status of the dealing entity or the location of the personnel (or agent) of the dealing entity. In other words, however the asset manager/execution agent allocates the bunched order execution in this example, there is no scenario where any part of the bunched order execution could be

326 See infra Section IX(C).

viewed as involving a non-U.S. person. Therefore, the initial bunched order execution involving the dealing entity on one side necessarily has a U.S. person on the other side, and the initial bunched order execution is subject to both regulatory reporting and public dissemination.

The Commission acknowledges that a more complex situation arises if the bunched order execution is between an unregistered non-U.S. person who is not engaging in ANE activity and an asset manager/execution agent acting on behalf of funds/accounts at least some of which are non-U.S. persons. In some cases, the status of the initial bunched order execution would be resolved if the asset manager/execution agent ultimately makes allocations only to funds/accounts that are U.S. persons.[327] In other cases, however, the asset manager/execution agent[328] might make allocations to some funds/accounts that are non-U.S. persons or might not, in unusual cases, make any allocations until more than 24 hours after the time of execution of the initial bunched order. Ordinarily, the U.S.-person status of the asset manager/execution agent is not determinative of whether the bunched order execution is subject to regulatory reporting and public dissemination under Rule 908(a)(1)(i) or any other provision of Rule 908(a).[329] In this

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327 The Commission understands from discussions with market participants that allocation determinations are generally made within 24 hours after execution. In such cases, the asset manager/execution agent would know that all of the security-based swaps resulting from allocation—as well as the initial bunched order execution—are subject to regulatory reporting and public dissemination, because of the U.S.-person status of all of fund/account counterparties, before a transaction report for the initial bunched order execution is due, at least during the first interim phase of security-based swap reporting.

328 The Commission notes that some transactions could involve more than one execution agent, and that the execution agent IDs of all execution agents of each direct counterparty would be required to be reported. See Regulation SBSR Adopting Release, 80 FR at 14583 ("The Commission notes that some security-based transactions may involve multiple agents").

329 Existing Rule 908(a)(1)(i) provides that a security-based swap shall be subject to regulatory reporting and public dissemination if there "is a direct or indirect counterparty

limited situation, however, the Commission believes that it would be reasonable for the sides to look to the U.S.-person status of the asset manager/execution agent to resolve whether or not the bunched order execution should be subject to regulatory reporting and public dissemination. Given that the true counterparties might be unknown or unknowable when the transaction report for the bunched order execution is due, the U.S.-person status of the asset manager/execution agent can serve as a reasonable proxy. Even if some or all of the allocation is subsequently made to funds/accounts that are not U.S. persons, it would not be inconsistent with Regulation SBSR if a regulatory report and public dissemination of the initial bunched order execution, including the full notional size, is made. Furthermore, if the asset manager/execution agent is not a U.S. person and the counterparties determine not to report the transaction on that basis, and if allocations are made to one or more funds/accounts that are U.S. persons, those security-based swaps resulting from the allocation would have to be reported, and the Commission would still have at least partial understanding of the overall transaction.[330] The Commission staff intends to evaluate this issue after required reporting commences.

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

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that is a U.S. person on either or both sides of the transaction." The execution agent/asset manager would not be a counterparty to the executed bunched order unless it was the primary obligor or a guarantor for the bunched order execution. See Rule 900(i) (defining "counterparty" for purposes of Regulation SBSR). If the asset manager/execution agent is the primary obligor or a guarantor of the security-based swap, it would be a counterparty and the outcome of the reporting hierarchy would have to reflect this fact.

330 The commenter observed that, "due to cross-border considerations the aggregate notional of a bunched order will not always tie out completely in reported SBSR data to the sum of the notional of its related allocations." ISDA/SIFMA Letter 28. This could occur if, for example, the initial bunched order execution were reported to a registered SDR, but certain security-based swaps resulting from the allocation were not, because they did not fall within any of the prongs of Rule 908(a)(1). The Commission recognizes this possibility. However, it does not appear that this would happen to such an extent as to compromise the Commission's ability to oversee the security-based swap market.

Existing Rule 901(d)(4) requires the reporting side to report, as applicable, the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID of the direct counterparty on the reporting side. One commenter requested that, for bunched order executions, the reporting side be excused from this requirement because the relevant information "can only be determined upon allocation as any reported values would refer to applicable agreements with each party to an allocation and not the execution agent. SBSR should explicitly absolve platforms, clearing agencies and reporting sides from the obligation to report the information required by §242.901(d)(4) for bunched orders."[331]

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

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

does not believe it is necessary to require the names and dates of the agreements to be reported with the initial bunched order execution.

VII. Reporting and Public Dissemination of Prime Brokerage Transactions

A. Background

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

- Transaction 1. The client and the executing dealer negotiate and agree to the terms of a security-based swap transaction (the "client/executing dealer

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

333 See id. at 14755.

transaction") and notify the prime broker of these terms. Transaction 1 is terminated upon the creation of Transaction 2 and 3, as described below.

- Transaction 2. If the terms of Transaction 1 are within the parameters established by the prime brokerage arrangement, the prime broker accepts the transaction and faces the executing dealer in a new security-based swap (the "prime broker/executing dealer transaction") having the same economic terms agreed to by the executing dealer and the client in Transaction 1.
- Transaction 3. Upon executing Transaction 2 with the executing dealer, the prime broker will enter into an offsetting security-based swap with the client (the "prime broker/client transaction").

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

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334 See ISDA/SIFMA Letter at 20.

335 See id.

336 See id. at 21.

dealer and one between the client and the prime broker.[337] The commenter expressed the view that there is not a transaction between the executing dealer and the client,[338] and that the initial negotiation between the executing dealer and the client results in a security-based swap between the executing dealer and the prime broker, with the client acting as the prime broker's agent.[339]

After considering these comments, the Commission is supplementing its views regarding the application of Regulation SBSR to prime brokerage arrangements. The Commission understands that the documentation used to structure a prime brokerage arrangement may vary. As described more fully below, the documentation may provide that the client acts as agent for the prime broker when negotiating the first leg with the executing dealer, resulting in a prime brokerage structure comprised of two legs (the prime broker/executing dealer transaction and the prime broker/client transaction). Alternatively, the documentation could provide that the negotiation between the client and the executing dealer results in a transaction between those two parties,[340] resulting in a prime brokerage structure comprised of three legs (the client/executing dealer transaction, the prime broker/executing dealer transaction, and the prime broker/client transaction). In cases where the client is acting as agent for the prime broker, the arrangement would result in the following two legs:

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

338 See id. at slide 11.

339 See id. at slide 5.

340 For example, the client and executing dealer could agree in advance that, in the event of rejection by the prime broker, they would preserve their contract without the involvement of the prime broker. See ISDA, 2005 ISDA Compensation Agreement ("ISDA Compensation Agreement") at Section 2.

- Transaction A. The client, acting as agent for the prime broker, and the executing dealer negotiate a security-based swap transaction and notify the prime broker of its terms. If the transaction does not satisfy the parameters in the prime brokerage agreement, the prime broker may reject the transaction. If the prime broker accepts the transaction, the prime broker and the executing dealer are counterparties to the security-based swap.
- Transaction B. If the prime broker accepts Transaction A, the prime broker also will enter into an offsetting security-based swap with the client.

In cases where the documentation provides for a three-legged structure, the Commission is making a minor modification to Rule 902(c) to account for the situation where a registered SDR receives notice that the prime broker has rejected the transaction before the SDR has received the initial transaction report.[341] The Commission discusses below the application of the reporting and dissemination requirements as they apply to the two-legged structure and provides additional clarification in response to comments.

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

In the Regulation SBSR Proposed Amendments Release, the Commission stated its understanding that prime brokerage arrangements involve credit intermediation offered by the prime broker, rather than a registered clearing agency; thus, prime brokerage transactions are not cleared.[342] Therefore, the application of Regulation SBSR's reporting and dissemination requirements to a prime brokerage arrangement detailed below assumes none of the security-

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341 See infra Section VII(D).

342 See 80 FR at 14755.

based swaps resulting from a prime brokerage arrangement is a clearing transaction, and that none is intended to be cleared.

1. If There Are Three Legs

In the Regulation SBSR Proposed Amendments Release, the Commission set forth its proposed interpretation of the application of Regulation SBSR to the three-legged prime brokerage structure.[343] The Commission is finalizing this interpretation substantially as proposed.

Because Transaction 1 (i.e., the client/executing dealer transaction) is not a clearing transaction and it is not intended to be cleared, the reporting hierarchy in existing Rule 901(a)(2)(ii) assigns the reporting duty for Transaction 1. If the prime broker accepts the transaction, the prime broker would initiate Transactions 2 and 3, which would have the effect of terminating Transaction 1. The termination would be a life cycle event of Transaction 1, and existing Rule 901(e)(2) requires the reporting side for Transaction 1 (likely the executing dealer) to report this life cycle event to the same registered SDR to which it reported Transaction 1.[344]

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

2. If There Are Two Legs

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343 See id. at 14755-57.

344 One commenter agreed with this approach, stating that the reporting obligation should remain with the original reporting side. See LCH.Clearnet Letter at 11.

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

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

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

C. Public Dissemination of Prime Brokerage Transactions

Existing Rule 902(a) requires public dissemination of each security-based swap, unless it falls within a category enumerated in Rule 902(c). If the documentation of the prime brokerage agreement is such that there are three security-based swaps, then each of the three is subject to public dissemination; if the documentation of the prime brokerage agreement is such that there are only two security-based swaps, both are subject to public dissemination.

If a prime broker rejects either Transaction 1 or Transaction A, the registered SDR would handle dissemination of information regarding the termination of the first transaction in the same manner as an alpha that has been rejected from clearing.[345]

One commenter reiterated an earlier request that the Commission exempt the prime broker/client leg of a prime broker transaction from public dissemination, arguing that dissemination of this transaction would provide misleading price data without providing any further transparency on costs related to prime brokerage.[346] The commenter argued that the prime broker's service fee is not relevant to security-based swap pricing.[347] In the Regulation SBSR Proposed Amendments Release, the Commission stated its preliminary belief that publicly disseminating reports of each leg of a prime brokerage transaction could provide market observers with useful information about the cost of the prime broker's credit intermediation services, because prime brokers may charge for these services by pricing the executing dealer/prime broker transaction differently than the prime broker/client transaction.[348] The Commission also noted that, with prime brokerage transactions, the only mechanism for ascertaining the charge for the credit intermediation service offered by the prime broker would be to compare the prices of Transaction 1 with the prices of any subsequent transaction.[349]

In response, the commenter noted that prime brokers might not in all cases include their fees in transaction prices and stated that, if the fees charged for prime brokerage services were

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345 See infra Section VII(D) (discussing the effect of rejection by the prime broker). See also supra Section III(J).

346 See ISDA/SIFMA Letter at 21.

347 See id.

348 See 80 FR at 14756.

349 See id.

useful to market observers, then such information could be more "reliably and accurately obtained by requesting it from a [prime broker]."[350] The Commission, however, continues to believe that disseminating each leg of a prime brokerage arrangement will enhance price discovery by helping market observers to distinguish between the price of a security-based swap and the cost of credit intermediation. Market participants should not have to request information from a prime broker regarding the manner in which the cost of a prime broker's credit intermediation service might affect the price of a security-based swap when the mandate of Section 13(m)(1)(C) provides all market observers with the ability to observe the prices directly. Even if the fees charged for prime brokerage services are not always reflected in transaction prices, at least some transaction prices will include the cost of credit intermediation. Therefore, the Commission believes that none of the legs of a prime brokerage transaction should be excluded from public dissemination.

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

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350 ISDA/SIFMA Letter at 21.

351 See supra note 223.

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

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

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352 See ISDA/SIFMA Letter at 22.

353 Id.

354 See 80 FR at 14612.

355 ISDA/SIFMA Letter at 21.

bunched order execution is subject to public dissemination.[356] Thus, the Commission agrees with the commenter that the security-based swaps resulting from the allocation of a prime broker/client transaction should not be publicly disseminated. However, the initial bunched order execution between the prime broker and the client is subject to public dissemination.

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

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

The effect of the rejection by the prime broker would depend on what, if any, contractual agreement exists between the executing dealer and its client. In some cases, the client and the executing dealer could have a pre-existing agreement that would allow them to revise the security-based swap with new terms if the prime broker rejects a transaction that they have negotiated.[357] If there is such an agreement and the client and executing dealer elect to preserve a security-based swap between them, the result would have to be reported in one of two ways. If the governing documentation provides that there are only two security-based swaps that could result from the prime brokerage arrangement (i.e., the initial leg is between the prime broker and the executing dealer, with the client acting as agent for the prime broker), the rejection by the prime broker would have the effect of terminating this leg, and the termination would have to be reported by the reporting side of the initial leg. The security-based swap arising between the client and the executing dealer would, because there are new counterparties, be a new security-

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356 See 80 FR at 14625-27. See also Rule 902(c)(7) (requiring a registered SDR to refrain from disseminating any information regarding the allocation of a security-based swap).

357 See, e.g., ISDA Compensation Agreement, at Section 2.

based swap, and the reporting side for this security-based swap would be determined by the reporting hierarchy. On the other hand, if the governing documentation provides that three security-swaps would result from the prime brokerage arrangement and the client and executing dealer intend to preserve the security-based swap with different terms, the rejection by the prime broker and the amendment with the new terms would have to be reported as a life cycle event of the initial leg (presumably by executing dealer). If there is no pre-existing agreement between the client and the executing dealer that would allow for an amendment to the initially negotiated leg or such an agreement exists but the client and executing dealer elect not to keep the security-based swap in existence, the prime broker's rejection would terminate the initial leg and the reporting side of the initial leg would have to report the termination.

If rejection by the prime broker results in a termination, one of two things must occur next. If the registered SDR that received the report of the initial leg has already disseminated it, the SDR must then disseminate a follow-up report indicating that the initial security-based swap has been terminated.[358] However, situations could arise where the registered SDR had not yet disseminated a report of the initial leg when it receives notice of the termination.[359] As noted in

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358 See Rule 902(a) (requiring, in relevant part, dissemination of life cycle events when there are changes to information provided under Rule 901(c)); Rule 907(a)(3) (requiring a registered SDR, in relevant part, to have written policies and procedures for flagging transaction reports involving life cycle events).

359 For example, assume that the prime brokerage agreement provides for a three-legged structure and the executing dealer is the reporting side for the initial leg between itself and the client. However, there is no pre-existing agreement between the client and executing dealer that would allow for the terms of the initial leg to be renegotiated if the prime broker rejects the transaction. Assume further that the executing dealer does not immediately report the initial leg. See Rule 901(j) (generally allowing up to 24 hours after the time of execution to report a security-based swap). When the client and the executing dealer convey the results of their negotiation to the prime broker, the prime broker rejects the transaction. The executing dealer may simultaneously report to a

Section III(J), supra, the Commission is adopting a new subparagraph (8) to existing Rule 902(c) providing that a registered SDR shall not publicly disseminate "[a]ny information regarding a security-based swap that has been rejected from clearing or rejected by a prime broker if the original transaction report has not yet been publicly disseminated." Therefore, if the registered SDR had not disseminated the transaction report for Transaction 1/Transaction A at the time that it receives the report of the termination of that transaction, the registered SDR would not disseminate any information regarding Transaction 1/Transaction A. Conversely, if the registered SDR had disseminated a transaction report of Transaction 1/Transaction A before receiving the termination report for that transaction, the registered SDR would disseminate a report of the termination of Transaction 1/Transaction A.

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

A. Background

Existing Rule 902(a) requires a registered SDR to publicly disseminate a transaction report of a security-based swap, or a life cycle event or adjustment due to a life cycle event, immediately upon receipt of information about the security-based swap, with certain exceptions noted in existing Rule 902(c). Existing Rule 900(cc) defines "publicly disseminate" to mean "to make available through the Internet or other electronic data feed that is widely accessible and in machine-readable electronic format." In the Regulation SBSR Proposed Amendments Release, the Commission stated its preliminary belief that a registered SDR should not be permitted to charge fees for the security-based swap transaction data that it is required to publicly disseminate

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registered SDR the terms of the initial leg and the fact that it has been rejected by the prime broker and terminated.

pursuant to Regulation SBSR.[360] Accordingly, the Commission proposed new Rule 900(tt), which would define the term "widely accessible"—as used in the definition of "publicly disseminate" in existing Rule 900(cc)—to mean "widely available to users of the information on a non-fee basis." As discussed in the SBSR Proposed Amendments Release, this proposed definition of "widely accessible" would have the effect of prohibiting a registered SDR from charging fees for, or imposing usage restrictions on, the security-based swap transaction data that it is required to publicly disseminate under Regulation SBSR.[361]

In proposing this requirement, the Commission considered the statutory requirements to establish post-trade transparency in the security-based swap market, the CFTC's rules for public dissemination, and comments received in response to Regulation SBSR, as originally proposed and as re-proposed. Title VII contains numerous provisions directing the Commission to establish a regime for post-trade transparency in the security-based swap market, which are designed to give the public pricing, volume, and other relevant information about all executed security-based swap transactions.[362] In the Regulation SBSR Proposed Amendments Release, the Commission expressed the preliminary view that the statutory requirement to make this transaction information publicly available would be frustrated if registered SDRs could charge members of the public for the right to access the disseminated data.[363]

The Commission also expressed the preliminary belief that it is necessary to prohibit a registered SDR from charging users of regulatorily mandated security-based swap transaction

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360 See 80 FR at 14760.

361 See id.

362 See id. at 14759-60.

363 See id. at 14760.

data for public dissemination of the data to reinforce existing Rule 903(b).[364] Rule 903(b) provides that a registered SDR may disseminate information using UICs (such as product IDs or other codes, such as reference entity identifiers, that are embedded within the product IDs) or permit UICs to be used for reporting by its participants only if the information necessary to interpret such UICs is widely available on a non-fee basis. The Commission continues to be concerned that a registered SDR that wished to charge (or allow others to charge) users for the information necessary to understand these UICs—but could not, because of Rule 903(b)—might seek to do so indirectly by recharacterizing the charge as being for public dissemination. Under these circumstances, the economic benefit to the registered SDR would be the same, but the manner in which the registered SDR characterizes the fee—i.e., whether as a charge to users for public dissemination or as a charge of accessing the UICs within the publicly disseminated data—would be the difference between the fee being permissible or impermissible under Rule 903(b). Accordingly, the Commission took the preliminary view that permitting a registered SDR to charge users for receiving the publicly disseminated transaction data could undermine the purposes of Rule 903(b).

The CFTC, in adopting its own rules for public dissemination of swap transactions, addressed the issue of whether a swap data repository could be allowed to charge for its publicly disseminated data. In Section 43.2 of its rules,[365] the CFTC defined "public dissemination" and "publicly disseminate" to mean "to publish and make available swap transaction and pricing data in a non-discriminatory manner, through the Internet or other electronic data feed that is widely published and in machine-readable electronic format." The CFTC also defined "widely

364 See id. at 14761.

365 17 CFR 43.2.

published" to mean "to publish and make available through electronic means and in a manner that is freely available and readily accessible to the public."[366] Section 43.3(d)(2) of the CFTC rules provides: "Data that is publicly disseminated . . . shall be available from an Internet Web site in a format that is freely available and readily accessible to the public." The CFTC stated that "implicit in this mandate [of public dissemination] is the requirement that the data be made available to the public at no cost,"[367] and that "Section 43.3(d)(2) reflects the [CFTC]'s belief that data must be made freely available to market participants and the public, on a nondiscriminatory basis."[368] Although prohibiting fees on the data that swap data repositories are required to publicly disseminate, the CFTC's rules permit a swap data repository to offer, for a fee, value-added data products derived from the freely available regulatorily mandated public data and to charge fair and reasonable fees to providers of swap transaction and pricing data.[369]

B. Comments Received and Final Rule

The Commission received six comments on whether registered SDRs should be permitted to charge fees or impose usage restrictions on publicly disseminated data.[370] Several commenters generally agreed with prohibiting an SDR from charging fees or imposing usage restrictions on the transaction data that it is required to publicly disseminate.[371] However, one

366 Id. (emphasis added).

367 Real-Time Public Reporting of Swap Transaction Data (Final Rule), 77 FR 1182, 1207 (January 9, 2012).

368 Id. at 1202 (emphasis added).

369 See id. at 1207.

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

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

commenter argued against imposing a prohibition against usage restrictions[372] and another requested that the Commission clarify the applicability of the prohibition.[373] After carefully considering all of the comments received, the Commission is adopting Rule 900(tt) as proposed and provides clarification, below, regarding application of the rule.

The Commission stated in the Regulation SBSR Proposed Amendments Release that the requirement that information be "widely available to users of the information on a non-fee basis" necessarily implies that a registered SDR would not be permitted to impose—or allow to be imposed—any usage restrictions on the security-based swap transaction information that it is required to publicly disseminate, including restrictions on access to or further distribution of the regulatorily mandated public security-based swap data.[374] One commenter agreed with this view[375] and another disagreed, the latter stating that a registered SDR should be able to manage redistribution of data it disseminates.[376] The commenter noted that a limitation on usage restrictions for publicly disseminated data would prevent a registered SDR from monetizing a potential revenue stream.[377] In addition, the commenter was concerned about claims related to data redistributed by others.[378] The commenter argued that a registered SDR should be permitted to impose various usage restrictions on its publicly disseminated data, such as a requirement to attribute the SDR as the source of the data, a restriction of the data to internal use,

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372 See DTCC Letter at 14-15, 18-19.

373 See Markit Letter at 15.

374 See Regulation SBSR Adopting Release, 80 FR at 14761.

375 See ISDA/SIFMA Letter at 29.

376 See DTCC Letter at 15, 19.

377 See id. at 15.

378 See id.

and a prohibition on redistribution of the data "without first engaging the SB SDR and agreeing on licensing terms."[379]

The Commission continues to believe that public dissemination would not satisfy the "widely available" standard in Rule 900(tt) if a registered SDR could deny access to users who do not agree to limit their use of the data in a manner directed by the registered SDR. Here, the Commission notes the asymmetric bargaining strength of the parties: A registered SDR has a monopoly position over the security-based swap transaction data that it is required to publicly disseminate, because the public has no access to that information until it is publicly disseminated. If a registered SDR could impose usage restrictions with which a user does not wish to comply, there would be no other source from which the user could freely obtain this transaction information.

The prohibition on usage restrictions would also prohibit an SDR-imposed restriction on bulk redistribution by third parties of the regulatorily mandated transaction data that the registered SDR publicly disseminates. Despite the objections of one commenter,[380] the Commission continues to believe that it could prove useful to the public for intermediaries to collect, consolidate, and redistribute the regulatorily mandated transaction data to the public. Users of the data might, instead of obtaining data directly from each of several SDRs, find it

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

380 See id. ("there should be no limitations on a registered trade repository's ability to manage the redistribution of data it has previously disseminated").

preferable to obtain the data from a single person who itself obtains the data directly from the multiple registered SDRs and consolidates it. The Commission continues to believe that allowing unencumbered redistribution best serves the policy goals of wide availability of the data and minimization of information asymmetries in the security-based swap market. Because the Commission is prohibiting registered SDRs from imposing a restriction on bulk redistribution, third parties (as well as registered SDRs themselves, as discussed below) will be able to take in the full data set and scrub, reconfigure, aggregate, analyze, repurpose, or otherwise add value to those data, and potentially sell that value-added product to others.

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

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381 Id. at 15.

The Commission recognizes that establishing and operating a registered SDR entails various costs. The Commission does not believe, however, that prohibiting a registered SDR from charging for data that it is required to publicly disseminate will impede its ability to carry out these functions because other viable sources of revenue are available to registered SDRs. One such source may be fees imposed on persons who are required to report transactions to the SDR. Thus, the Commission believes that, with the adopted definition of "widely accessible," a registered SDR will have adequate sources of funding even if it is prohibited from charging users fees for receiving the security-based swap transaction data that the SDR is required to publicly disseminate.[382]

C. Other Interpretive Issues

Two commenters advocated that a registered SDR be permitted to offer value-added services related to publicly disseminated data.[383] One of these commenters stated, for example, that a registered SDR "should be permitted to commercialize aggregated SB swap data and charge fees for value-added data products that incorporate the regulatorily mandated transaction data."[384] As the Commission stated in the Regulation SBSR Proposed Amendments Release,[385]

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382 One commenter, responding to the Commission's request for comment on what means exist for registered SDRs to recoup their operating costs, stated: "Non-reporting sides should be charged a minimum monthly fee for system access. This minimum charge reflects the fact that non-reporting and small volume participants tend to require equal levels of support and other resources relative to moderate and high volume participants." ICE Letter at 7. This issue is beyond the scope of this rulemaking, although the Commission notes that existing Rule 13n-4(c)(1)(i) under the Exchange Act requires an SDR to ensure that any dues, fees, or other charges imposed by the SDR are fair and reasonable and not unreasonably discriminatory.

383 See DTCC Letter at 14-15, 18-19; ISDA/SIFMA Letter at 29.

384 DTCC Letter at 14-15 (also stating that "[a]n SB SDR that is permitted to do so would likely be better equipped to bear the costs associated with operating a Commission-registered SB SDR. In turn, to the extent that such commercialization offsets the costs of

existing Rule 902(a) does not prohibit a registered SDR from creating and charging fees for a value-added data product that incorporates the regulatorily mandated transaction data, provided that the registered SDR has first satisfied its duty under Rule 902(a) to publicly disseminate the regulatorily mandated transaction data in accordance with the definition of "widely accessible." To comply with Rule 902(a), a registered SDR must publicly disseminate a transaction report of a security-based swap (assuming that the transaction does not fall within Rule 902(c)) immediately upon receipt of information about the security-based swap. Thus, a registered SDR would not be permitted to make its value-added product available before it publicly disseminated the regulatorily mandated transaction report because such dissemination would not comply with the requirement in Rule 902(a) that a registered SDR publicly disseminate a transaction report of a security-based swap immediately upon receipt of information about the security-based swap.

This approach is consistent with parallel CFTC rules that require regulatorily mandated data to be freely available to the public but do not prohibit a CFTC-registered swap data repository from making commercial use of such data subsequent to its public dissemination.[386] This approach also allows potential competitors in the market for value-added security-based swap data products to obtain the regulatorily mandated transaction information from registered SDRs that have a monopoly on this information until it is publicly disseminated.[387] Potential competitors to the registered SDR could be at a disadvantage if, needing the raw data for their own services, they had to purchase a value-added data product from the registered SDR or could

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operating the SDR, the costs of reporting for reporting counterparties would likely be reduced").

385 See 80 FR at 14762.

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

387 See infra Section XIII(F).

obtain the regulatorily mandated transaction data only on a delayed basis. The Commission notes, finally, that any value-added data product offered by an SDR may be subject to certain SDR rules.[388]

A final commenter "ask[ed] the Commission to clarify that the restrictions on user fees and usage in Proposed Rule 900(tt) extends only to data that is disseminated by SDRs in a post-trade context." [389] The commenter further stated: "We note and ask the Commission to confirm that certain information contained in publicly-disseminated SBS transaction records may be proprietary and therefore subject to usage restrictions in pre-trade contexts . . . We believe this clarification is needed because in its absence, we have reason to expect some market participants to infer that because SDRs may not impose usage restrictions on information contained in a publicly-disseminated SBS record, that all such limitations on user fees and usage restrictions, i.e., in pre-trade contexts, are similarly prohibited. However, we do not believe that it is the Commission's intention . . . to eliminate all user fees and usage restrictions on information contained in publicly disseminated SBS data."[390] The commenter further stated that there would

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388 See, e.g., Rule 13n-4(c)(1)(i) (requiring that any dues, fees, or other charges imposed by an SDR are fair and reasonable and not unreasonably discriminatory); Rule 13n-4(c)(1)(ii) (requiring an SDR to permit market participants to access specific services offered by the SDR separately); Rule 13n-4(c)(1)(iii) (requiring an SDR to establish, monitor on an ongoing basis, and enforce clearly stated objective criteria that would permit fair, open, and not unreasonably discriminatory access to services offered and data maintained by the SDR).

389 Markit Letter at 15.

390 Id. (stating that eliminating all user fees and usage restrictions in the pre-trade context "would erase much of the value of virtually all proprietary reference rates, underlier codes, prices, or indexes used in SBS transactions").

not be any significant benefit to post-trade transparency from restrictions on user fees and usage in pre-trade contexts.[391]

The Commission declines to make the clarification requested by the commenter. In fact, it is the Commission's intention to eliminate all fees and usage restrictions on the information that a registered SDR is required to publicly disseminate. In the Commission's view, the commenter's distinction between "post-trade contexts"—where fees and usage restrictions could not be imposed—and "pre-trade contexts"—where, according to the commenter, they could be imposed—would be unworkable. The Commission intends for market observers to be able to take in the security-based swap transaction data that are publicly disseminated by registered SDRs on a mandatory basis and scrub, reconfigure, aggregate, analyze, repurpose, or otherwise add value to that publicly disseminated data in any manner that they see fit, without fear that doing so might subject them to liability to a third party for violating a license agreement.[392] It would be difficult if not impossible for a market observer to explain that its use of particular codes derives only from the "post-trade context" when utilization of the same codes "in the pre-trade context" might render the market observer liable to the third party who claims to own intellectual property in the code. When proposing the requirement that the information mandatorily disseminated by a registered SDR be "widely available on a non-fee basis," the Commission stated that the requirement "necessarily implies that a registered SDR would not be permitted to impose—or allow to be imposed—any usage restrictions on the security-based swap

391 See id.

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

transaction data that it is required to publicly disseminate."[393] Thus, if a registered SDR requires or permits the use of any code or other data element where there is a reasonable threat that a third-party holder of rights in that code or in other data elements might attempt to enforce those rights against market observers, the registered SDR would not be acting consistent with Rule 903 by requiring or permitting use of that code for reporting or publicly disseminating security-based swap transaction information pursuant to Regulation SBSR. If license restrictions or any other contractual restrictions in the "pre-trade context" could in any way impede usage of the data in a "post-trade context," then any codes or other data elements that have license restrictions may not be used under Rule 903.

IX. Cross-Border Matters

A. Introduction

In November 2010,[394] the Commission proposed Rule 908(a) to define the scope of cross-border transactions that would be subject to Regulation SBSR's regulatory reporting and public dissemination requirements, and proposed Rule 901(a) to establish a reporting hierarchy for identifying the person that would have the duty to report the security-based swap in a variety of contexts, including cross-border contexts. In May 2013, the Commission re-proposed Rules 901 and 908 with substantial revisions as part of the Cross-Border Proposing Release.[395] The

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393 Regulation SBSR Proposed Amendments Release, 80 FR at 14761 (emphasis added).

394 See Regulation SBSR Proposing Release, supra note 5.

395 See supra note 5. 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 at 75287. 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 unduly required a security-based swap to be reported if it had only the slightest connection with the United States. See Cross-Border Proposing Release, 78 FR at 31061.

Commission adopted modified versions of re-proposed Rules 901 and 908 as part of Regulation SBSR.[396] When doing so, the Commission identified certain transactions involving non-U.S. persons that would not be addressed by Rules 901(a) and 908, as adopted in the Regulation SBSR Adopting Release, and stated its intention to seek additional comment regarding how Regulation SBSR should apply to those transactions. In April 2015, the Commission addressed those transactions in the U.S. Activity Proposal, which included proposed amendments to Rules 901(a), 908, and related rules in Regulation SBSR. These amendments would, among other things, apply Regulation SBSR's regulatory reporting and public dissemination requirements to security-based swap transactions of a non-U.S. dealing entity that are arranged, negotiated, or executed by personnel of the non-U.S. person located in a U.S. branch or office, or by the personnel of its agent located in a U.S. branch or office.[397] In addition, the Commission solicited comment on whether certain transactions of non-U.S. persons whose obligations under a security-based swap are guaranteed by a U.S. person should be exempt from the public dissemination requirement.[398]

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

396 See Regulation SBSR Adopting Release, 80 FR at14596-604, 14649-68.

397 See supra note 87.

398 See U.S. Activity Proposal, 80 FR at 27478.

ANE activity.[399] For the reasons discussed below, the Commission is adopting substantially as proposed the amendments to Regulation SBSR proposed in the U.S. Activity Proposal.

B. Existing Rules 901 and 908

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

Rule 908(b) is designed to specify the types of persons that will incur duties under Regulation SBSR. If a person does not come within any of the categories enumerated by Rule 908(b), it does not incur any duties under Regulation SBSR.[400]

Under Rule 908(a), as re-proposed in the Cross-Border Proposing Release, security-based swaps that would have fallen within the proposed definition of "transaction conducted within the United States" would have been among the security-based swaps subjected to both regulatory reporting and public dissemination.[401] In adopting Regulation SBSR, the Commission did not

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399 See supra note 16.

400 See Regulation SBSR Adopting Release, 80 FR at 14656.

401 Rule 900(ii), as re-proposed in the Cross-Border Proposing Release, would have defined "transaction conducted within the United States" to have the same meaning as in Exchange Act Rule 3a71-3(a)(5)(i), as proposed in the Cross-Border Proposing Release.

include in Rule 908(a)(1) a prong for "transactions conducted within the United States," noting that commenters had expressed divergent views on this particular element of the re-proposed rule.[402] Similarly, the Commission, in the Cross-Border Proposing Release, proposed to expand Rule 908(b) to include any counterparty to a transaction conducted in the United States. However, Rule 908(b), as adopted in the Regulation SBSR Adopting Release, included only U.S. persons, registered security-based swap dealers, and registered major security-based swap participants. Thus, under the rules adopted in the Regulation SBSR Adopting Release, a non-U.S.-person security-based swap dealer or major security-based swap participant would incur an obligation under Regulation SBSR only if it were registered. The Commission noted that it anticipated soliciting additional public comment on whether regulatory reporting and/or public dissemination requirements should be extended to transactions occurring within the United States between non-U.S. persons and, if so, which non-U.S. persons should incur reporting duties under Regulation SBSR.[403] The Commission solicited comment on these questions in the U.S. Activity Proposal.[404]

While Rule 908(a) specifies what types of security-based swap transactions are subject to regulatory reporting and/or public dissemination and Rule 908(b) specifies the types of persons that will incur duties under Regulation SBSR, Rule 901(a) assigns the duty to report each individual transaction. Rule 901(a), as adopted in the Regulation SBSR Adopting Release, did not address the reporting of many types of cross-border transactions, and the Commission noted that it anticipated soliciting additional comment about how to apply Regulation SBSR, including

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402 See Regulation SBSR Adopting Release, 80 FR at 14656.

403 See id.

404 See 80 FR at 27489-90.

which side should incur the reporting duty, in a security-based swap transaction between two unregistered non-U.S. persons and in a transaction between an unregistered U.S. person and an unregistered non-U.S. person.[405] The U.S. Activity Proposal, among other things, proposed amendments to Rules 900, 901(a), 906, 907, and 908 of Regulation SBSR to address the regulatory reporting and public dissemination of transactions involving non-U.S. persons that were not addressed in the Regulation SBSR Adopting Release. The proposed amendments, the comments received, and final rules are discussed below.

C. Extending Regulation SBSR to All ANE Transactions

1. Description of Proposed Rule

In the U.S. Activity Proposal, the Commission proposed to add a new subparagraph (v) to Rule 908(a)(1). Proposed Rule 908(a)(1)(v) would require any security-based swap transaction connected with a non-U.S. person's security-based swap dealing activity that is arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office—or by personnel of its agent located in a U.S. branch or office—to be reported and publicly disseminated. This amendment would expand the scope of Regulation SBSR in two ways. First, it would require that a transaction of a foreign dealing entity be subject to both regulatory reporting and public dissemination if the non-U.S. person would be required to include the transaction in its de minimis threshold calculation under Rule 3a71-3(b)(1)(iii)(C) under the Exchange Act.[406] Second, the proposed rule would require public dissemination of any ANE transaction of a foreign dealing entity, even if there is no U.S. person on the other side and the transaction is not accepted for clearing by a clearing agency having its principal place of

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405 See Regulation SBSR Adopting Release, 80 FR at 14598.

406 17 CFR 240.3a71-3(b)(1)(iii)(C).

business in the United States. Under existing Rule 908(a), a transaction of a registered foreign security-based swap dealer—even if it is an ANE transaction—would be subject to regulatory reporting but not public dissemination if there is no U.S. person on the other side and the transaction is not accepted for clearing by a clearing agency having its principal place of business in the United States.[407]

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

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[407] Under Exchange Act Rule 3a71-1(c), 17 CFR 240. 3a71-1(c), absent a limitation by the Commission, a security-based swap dealer is deemed to be a security-based swap dealer with respect to each security-based swap that it enters into, regardless of the type, class, or category of the security-based swap or the person's activities in connection with the security-based swap. Accordingly, for purposes of this rule, any transaction that a registered security-based swap dealer arranged, negotiated, or executed using personnel located in a U.S. branch or office would be "in connection with its dealing activity" and subject to both regulatory reporting and public dissemination.

will become subject to Regulation SBSR and assume the highest rung in the reporting hierarchy because of their registration status.

2. Discussion of Comments and Final Rule

Several commenters opposed extending Regulation SBSR's regulatory reporting and public dissemination requirements to ANE transactions.[408] One of these commenters stated, for example, that transactions between non-U.S. persons, where there is no guarantee by a U.S. person on either side, should not be required to be reported or publicly disseminated in the United States because they "lack the requisite nexus to the United States regardless of the location of conduct of the counterparties."[409] A second commenter stated that transactions that have no U.S.-person counterparty should not be publicly disseminated because they "have minimal, if any, impact on or relevance for the U.S. SBS markets even if they are arranged, negotiated or executed in the United States."[410] A third commenter argued that "[r]equiring non-registrants to publicly disseminate and report ANE transactions seems unnecessary in light of the fact that only small numbers of ANE transactions do not involve a registered SBSD or registered MSBSP and would also be unduly burdensome for non-registrants that are only engaged in de minimis SBS activities."[411] Two other commenters expressed concern about the costs that the

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408 See IIB Letter at 14-17; ISDA I at 3 (arguing generally that any security-based swap between two non-U.S. persons that is cleared outside the United States should not be subject to Regulation SBSR); SIFMA-AMG I at 5-7; SIFMA/FSR Letter at 11-14; UBS Letter at 3.

409 SIFMA/FSR Letter at 12. In the commenter's view, public dissemination of transactions between non-U.S. persons based on U.S.-located conduct could result in the dissemination of information that is not informative or that gives a distorted view of prevailing market prices, while the regulatory reporting of these transactions would not be useful because of the minimal U.S. nexus. See id.

410 See ISDA I at 13.

411 UBS Letter at 3.

proposed rule could impose on unregistered foreign dealing entities to report ANE transactions.[412] One of these commenters stated that there would be significant costs associated with reporting ANE transactions because market participants that have already designed and implemented reporting systems based on the CFTC's "status-based" approach to the scope of reporting requirements and the rules of other jurisdictions would need to modify their systems to comply with the Commission's rules.[413]

After carefully considering these comments, the Commission is adopting Rule 908(a)(1)(v) as proposed. Consistent with its territorial application of Title VII requirements,[414] the Commission believes that, when a foreign dealing entity uses U.S. personnel to arrange, negotiate, or execute a transaction in a dealing capacity, that transaction occurs at least in part

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412 See IIB Letter at 16; SIFMA/FSR Letter at 13 ("It is generally not possible to directly determine the location of counterparty conduct without substantial effort, expense and operational changes to systematically capture and process this data—burdens on market participants that will certainly outweigh the perceived regulatory benefits of obtaining transaction data for security-based swaps required to be reported as a result of U.S.-located conduct. These burdens will also fall on unregistered entities that have no reporting infrastructure and that are not well-equipped to ascertain whether they have a reporting obligation, as long as there are trades between non-U.S. persons, neither of which is a dealer").

413 See IIB Letter at 16 (stating that, to modify its systems in connection with the Commission's requirements, a foreign dealing entity, including one operating below the de minimis threshold, "would need to install or modify a trade capture system capable of tracking, on a dynamic, trade-by-trade basis, the location of front-office personnel. The non-U.S. SBSD would then need to feed that data into its reporting system and re-code that system to account for the different rules that apply to non-U.S. SBS depending on whether they are arranged, negotiated or executed by U.S. personnel. The non-U.S. SBSD would also need to train its front office personnel in the use of this new trade capture system and develop policies, procedures, and controls to require, track, and test the proper use of that system. In addition, the non-U.S. SBSD would need to seek and obtain waivers from non-U.S. counterparties—to the extent such waivers are even permitted—with respect to privacy, blocking and secrecy laws in local jurisdictions").

414 See, e.g., U.S. Activity Adopting Release, 81 FR at 8613-17; Regulation SBSR Adopting Release, 80 FR at 14649-50; Cross-Border Adopting Release, 79 FR at 47287-88.

within the United States and is relevant to the U.S. security-based swap market. The Commission has previously determined that ANE activity carried out by U.S. personnel warrants application of the security-based swap dealer registration requirements.[415] The Commission believes that there is sufficient "nexus" to apply Title VII's regulatory reporting and public dissemination requirements to security-based swap transactions involving a foreign dealing entity that is using U.S. personnel to engage in ANE activity with respect to a particular transaction. As the Commission has stated previously, declining to apply Title VII requirements to security-based swaps of foreign dealing entities that use U.S. personnel to engage in ANE activity would have the effect of allowing such entities "to exit the Title VII regulatory regime without exiting the U.S. market."[416] Further, as discussed in Section X, infra, reporting under Regulation SBSR will commence following security-based swap dealer registration. Thus, for the vast majority of transactions of foreign dealing entities falling within the scope of Rule 908(a), the reporting obligation under Regulation SBSR will arise from an entity's status as a registered security-based swap dealer, and entities that are registered as security-based swap dealers will not be required to assess whether they have engaged in ANE activity with respect to a transaction. The costs associated with the reporting of ANE transactions are discussed more fully below.

a. Impact on Regulatory Reporting

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415 See U.S. Activity Adopting Release, 81 FR at 8614 ("we do not believe that security-based swap dealing activity must create counterparty credit risk in the United States for there to be a 'nexus' sufficient to warrant security-based swap dealer registration").

416 U.S. Activity Adopting Release, 81 FR at 8616. See also Cross-Border Adopting Release, 79 FR at 47288 ("Our territorial approach applying Title VII to dealing activity similarly looks to whether [relevant activities] occur with the United States, and not simply to the location of the risk").

The Commission notes that all security-based swaps of registered security-based swap dealers, whether U.S. or foreign, are subject to regulatory reporting under existing Rule 908(a)(2). For transactions involving foreign dealing entities that register with the Commission as security-based swap dealers, the regulatory reporting requirement stems from the involvement of the registered person, not from the presence of any ANE activity. Therefore, new Rule 908(a)(1)(v) does not subject any additional transactions involving registered security-based swap dealers to Regulation SBSR's regulatory reporting requirements.[417]

New Rule 908(a)(1)(v) extends the regulatory reporting requirements only to transactions involving an unregistered foreign dealing entity (when it engages in ANE activity) when no other condition is present that would trigger regulatory reporting (e.g., there is a U.S. person or registered security-based swap dealer on the other side). Thus, Rule 908(a)(1)(v) imposes regulatory reporting requirements only to transactions in which an unregistered foreign dealing entity enters into a transaction with another unregistered foreign person.

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

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417 But see infra Section IX(C)(2)(b) (explaining that new Rule 908(a)(1)(v) subjects additional transactions involving registered security-based swap dealers to Regulation SBSR's public dissemination requirements).

transacts with another unregistered foreign person. In this release, the Commission estimates that only four foreign dealing entities likely will engage in ANE transactions and remain below the de minimis threshold, and thus be counterparties to security-based swaps that fall within Rule 908(a)(1)(v).[418]

As noted above,[419] some commenters expressed concern about the costs associated with requiring ANE transactions of unregistered foreign dealing entities to be reported, which will require an assessment of whether ANE activity is present in a particular transaction.[420] One commenter argued, for example, that regulatory reporting of these transactions "seems unnecessary in light of the fact that only small numbers of ANE transactions" would be captured by Rule 908(a)(1)(v).[421] The Commission agrees that only a small number of additional transactions will become subject to regulatory reporting because of Rule 908(a)(1)(v). However, because all ANE transactions occur at least in part within the United States, reporting these transactions to a registered SDR will enhance the Commission's ability to oversee relevant security-based swap activity within the United States as well as to evaluate market participants for compliance with specific Title VII requirements (including the requirement that a person register with the Commission as a security-based swap dealer if it exceeds the de minimis

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418 See infra note 885 and accompanying text.

419 See supra notes 412-413 and accompanying text.

420 Other comments also discussed the costs of assessing whether ANE activity is present in a transaction involving only unregistered foreign persons, but under the assumption that the Commission would require reporting compliance before requiring security-based swap dealers to register as such. See ISDA I at 11-13; ISDA II at 3-10; ISDA III, passim; ISDA/SIFMA Letter at 9-12; SIFMA-AMG I at 6-7. These comments are addressed by Section X, infra, where the Commission revises the proposed compliance schedule and adopts a final compliance schedule that aligns Regulation SBSR compliance with security-based swap dealer registration.

421 UBS Letter at 3.

threshold).[422] The reporting of these additional ANE transactions also will enhance the Commission's ability to monitor for manipulative and abusive practices involving security-based swaps or transactions in related assets, such as corporate bonds.[423]

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

The Commission acknowledges that subjecting ANE transactions between unregistered non-U.S. persons to regulatory reporting requirements under new Rule 908(a)(1)(v) also will result in certain programmatic costs.[425] The Commission assesses those costs against the benefits of the rule to the Commission, other relevant authorities, and the market in general.[426] The Commission continues to believe that reporting of these ANE transactions to a registered SDR will enhance the Commission's ability to monitor relevant activity related to security-based swap dealing occurring within the United States as well as to monitor market participants for

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422 See U.S. Activity Proposal, 80 FR at 27483.

423 See id.

424 See infra Section XII(B)(1).

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

426 See infra Section XII(A)(4)(a) (discussing the estimated costs and benefits of new Rule 908(a)(1)(v)).

compliance with specific Title VII requirements (including the requirement that a person register with the Commission as a security-based swap dealer if it exceeds the de minimis threshold).

b. Impact on Public Dissemination

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

determining whether the transaction is subject to public dissemination. The Commission anticipates that a significant number of transactions between foreign registered security-based swap dealers will be with other non-U.S. persons (including other foreign registered security-based swap dealers). Under existing Rule 908(a), the overwhelming majority of these transactions would have been subject only to regulatory reporting. However, with the adoption of Rule 908(a)(1)(v), many of these transactions also will be subject to public dissemination, if there is a foreign dealing entity on either side that is engaging in ANE activity.

The Commission believes that it is appropriate to apply the public dissemination requirements to all ANE transactions, even those between two foreign counterparties where only one side is engaging in ANE activity. Transactions that are arranged, negotiated, or executed by U.S. personnel of a foreign dealing entity exist at least in part within the United States. Subjecting such transactions to public dissemination is consistent with the Commission's territorial application of Title VII requirements.[427] The Commission believes that the public dissemination of ANE transactions will increase price competition and price efficiency in the security-based swap market generally, and enable all market participants to have more comprehensive information with which to make trading and valuation determinations for security-based swaps and related and underlying assets.[428]

Thus, the Commission disagrees with the commenter who did "not believe the public dissemination of SBS between non-US Persons increases transparency to the public"[429] and another commenter who asserted that publicly disseminating such transactions between non-U.S.

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427 See, e.g., U.S. Activity Adopting Release, 81 FR at 8613-17; Regulation SBSR Adopting Release, 80 FR at 14649-50; Cross-Border Adopting Release, 79 FR at 47287-88.

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

429 ISDA III at 11.

persons could result in the dissemination of information that is not informative or that gives a distorted view of prevailing market prices.[430] The Commission believes, to the contrary, that public dissemination of transactions between non-U.S. persons, where one or both sides are engaging in ANE activity, will be informative and will provide useful information about prevailing market prices in the U.S. security-based swap market. The fact that a foreign dealing entity uses U.S. personnel to arrange, negotiate, or execute a transaction suggests that these personnel were selected because they have familiarity with the U.S. security-based swap market, and that the instruments involved in such transactions between non-U.S. persons are typically the same or similar to instruments traded between foreign dealing entities and U.S. persons.[431] The Commission believes, therefore, that public dissemination of all ANE transactions will contribute to price discovery and price competition in the U.S. security-based swap market. The Commission further believes that—rather than providing a distorted view of prevailing market

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430 See SIFMA/FSR Letter at 12.

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

prices, as these commenters suggest—the dissemination of ANE transactions will provide a more comprehensive view of activity in the U.S. market.

Another commenter questioned the transparency benefits of publicly disseminating uncleared bilateral trades that may include bespoke terms.[432] However, as the Commission previously discussed in the Regulation SBSR Adopting Release, even bespoke transactions have price discovery value and thus should be publicly disseminated.[433] Requiring the public dissemination of all ANE transactions, whether cleared or uncleared, will increase price competition and price efficiency in the security-based swap market generally, and enable all market participants to have more comprehensive information with which to make trading and valuation determinations for security-based swaps and related and underlying assets.[434]

Another commenter expressed concerns about the market possibly front-running the hedges of a foreign dealing entity if all ANE transactions were subject to public dissemination. The Commission does not find this a persuasive argument against imposing the public dissemination requirements on all ANE transactions. The concern about public dissemination triggering adverse market impact, such as higher prices to hedge, is common to all security-based swap transactions, regardless of whether a transaction is subject to public dissemination because it involves a U.S. counterparty or because it is an ANE transaction. Therefore, as the

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432 See IIB Letter at 15.

433 See Regulation SBSR Adopting Release, 80 FR at 14611 ("The disseminated price [of a bespoke transaction] could, for example, still have an anchoring effect on price expectations for future negotiations in similar or related products, even in thinly-traded markets. Furthermore, even if it is difficult to compare price data across customized transactions, by disseminating reports of all bespoke transactions market observers can understand the relative number and aggregate notional amounts of transactions in bespoke products versus standardized products").

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

Commission decided in the Regulation SBSR Adopting Release, all transactions will during the first phase of Regulation SBSR have up to 24 hours from the time of execution to be reported (and then immediately disseminated by a registered SDR).[435]

One commenter argued that the proposed rule would not enhance transparency in the U.S. security-based swap market because it would create incentives for non-U.S. counterparties to avoid interactions with U.S. personnel.[436] The commenter believed that the Commission's analysis of the trade-off between transparency and liquidity did not fully address the costs and benefits of applying a U.S.-personnel test to the public dissemination requirement.[437] Such fragmentation, in the commenter's view, would lead to adverse effects on effective risk management, market liquidity, and U.S. jobs. The commenter also expressed concern that the costs associated with reporting ANE transactions could lead some non-U.S. security-based swap dealers to prevent their U.S. personnel from interacting with non-U.S. counterparties, and some non-U.S. counterparties to avoid interactions with U.S. personnel.[438]

The Commission acknowledges, as this commenter suggests, that to avoid public dissemination some foreign dealing entities might prevent their U.S. personnel from interacting

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

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

437 See id. at 15.

438 See id. at 15-16.

with non-U.S. counterparties, and some non-U.S. counterparties might avoid interactions with U.S. personnel. The Commission believes, nevertheless, that public dissemination of all ANE transactions is necessary to advance the Title VII objectives of enhancing transparency in the security-based swap market. The Commission notes that new Rule 908(a)(1)(v) extends the public dissemination requirements only to ANE transactions of foreign dealing entities with non-U.S. persons; transactions of foreign dealing entities with U.S. persons—regardless of whether they are arranged, negotiated, or executed by U.S. personnel—are already subject to existing Rule 908(a)(1)(i) by virtue of a U.S. person's involvement in the transaction. The Commission believes, therefore, that extending the public dissemination requirements to ANE transactions involving non-U.S. persons will promote a level playing field. Without Rule 908(a)(1)(v), the U.S. personnel of a foreign dealing entity might be able to offer liquidity to non-U.S. persons at lower prices than to U.S. persons, because the foreign dealing entity would not have to embed the potential costs of public dissemination into the prices offered to non-U.S. persons. By contrast, the prices offered by the foreign dealing entity to U.S. persons would likely reflect any such additional costs, to the extent that public dissemination of a particular transaction imposes costs on the counterparties.[439] While the benefit of lower prices obtained by non-U.S. persons would depend on the magnitude of the perceived costs of public dissemination, the Commission believes that it is appropriate to place the transactions of U.S. persons and non-U.S. persons on a more equal footing, so that non-U.S. persons do not have a competitive advantage over U.S.

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[439] However, to the extent that transactions of foreign dealing entities are subject to public dissemination requirements under the rules of a foreign jurisdiction, the costs of public dissemination should already be factored into the prices offered to their non-U.S. counterparties, and Rule 908(a)(1)(v) should not affect the prices that foreign dealing entities that engage in ANE transactions offer to their non-U.S. counterparties.

persons when engaging in security-based swap transactions that, due to the involvement of U.S. personnel of the foreign dealing entity, exist at least in part within the United States.

The commenter also argued that it would be problematic for foreign dealing entities to assess for ANE activity, which would trigger the public dissemination requirement.[440] However, such an assessment is not required unless a foreign dealing entity wishes to exclude the transaction from public dissemination because relevant activity does not occur within the United States (and there is no other basis for public dissemination under Rule 908(a)(1)). For any transaction report, the default assumption is that it is subject to public dissemination, unless the person submitting the report has appropriately flagged it as "do not disseminate."[441] A registered foreign security-based swap dealer that does not wish to assess a transaction for ANE activity could simply refrain from applying the flag and the transaction would be publicly disseminated.[442]

c. Impact of Substituted Compliance

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

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

441 See Regulation SBSR Adopting Release, 80 FR at 14610 ("A registered SDR would not be liable for a violation of Rule 902(c) if it disseminated a report of a transaction that fell within Rule 902(c) if the reporting side for that transaction failed to appropriately flag the transaction as required by Rule 907(a)(4)").

442 Cf. U.S. Activity Adopting Release, 81 FR at 8628 ("a dealer may choose to count all transactions with other non-U.S. persons towards its de minimis threshold, regardless of whether counting them is required, to avoid the cost of assessing the locations of personnel involved with each transaction").

jurisdiction.[443] These commenters recommended that the Commission obtain information about these transactions through information-sharing arrangements with foreign regulatory authorities, rather than establishing duplicative reporting requirements.[444] One of these commenters expressed concern that the potential for duplicative reporting could overstate trading volumes in the security-based swap market, which would not advance the G20's goal of improving transparency for derivatives.[445] Two commenters argued that foreign regulators would have a greater interest than the Commission in establishing transparency requirements for security-based swaps involving non-U.S. counterparties.[446]

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

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443 See SIFMA/FSR Letter at 12; SIFMA-AMG I at 6.

444 See id.

445 See SIFMA-AMG I at 2, 6. The commenter also stated that reporting the same transaction to trade repositories in the United States and the European Union could undermine the quality of publicly disseminated information because of errors caused by reporting the same transaction in multiple jurisdictions. See id. at 6.

446 See IIB Letter at 15; SIFMA/FSR Letter at 12.

distortions of the market would thus not arise.[447] A person relying on substituted compliance in this manner would remain subject to the applicable Exchange Act requirements but would be complying with those requirements in an alternative fashion.

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

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447 The Commission further notes that, to the extent that ANE transactions involving foreign dealing entities are subject to comparable requirements for reporting and public dissemination in another foreign jurisdiction—a necessary but not sufficient condition for the Commission to issue a substituted compliance order—a foreign dealing entity would not have an incentive to avoid Regulation SBSR's public dissemination requirements by, for example, relocating its personnel, because the transaction would in any case be subject to the public dissemination requirements of the other jurisdiction. Relocating personnel or curtailing the activities of personnel who remain in the United States would be effective in avoiding public dissemination only if public dissemination requirements applied to the transaction pursuant only to Regulation SBSR.

one of the direct counterparties to the security-based swap is a non-U.S. person or a foreign branch are eligible for substituted compliance.

Finally, one commenter asserted that, "[w]ith respect to Non-U.S. SBS cleared outside the United States, foreign regulators have a relatively greater interest than the Commission in establishing applicable transparency requirements."[448] The Commission acknowledges that foreign regulatory authorities have a regulatory interest in security-based swaps that are cleared in their jurisdictions. However, for the reasons discussed above, the Commission also has a regulatory interest when a transaction involves ANE activity conducted by U.S. personnel of one or both sides of the transaction—even if the transaction is subsequently cleared outside the United States. Public dissemination of all ANE transactions should increase transparency and facilitate price discovery and price competition in the U.S. security-based swap market; regulatory reporting of all ANE transactions will enhance the Commission's ability to oversee the U.S. security-based swap market and the activities of U.S. personnel who are involved in arranging, negotiating, or executing such transactions. The Commission believes, therefore, that it has a compelling interest in establishing regulatory reporting and public dissemination requirements for all ANE transactions.

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

In the U.S. Activity Proposal, the Commission proposed a new subparagraph (iii) to Rule 908(a)(1) that would have subjected any security-based swap transaction that is executed on a platform having its principal place of business in the United States to regulatory reporting and public dissemination. The Commission also proposed a new subparagraph (iv) to Rule 908(a)(1)

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448 See IIB Letter at 15.

that would subject any security-based swap transaction that is effected by or through a registered broker-dealer (including a registered SB SEF) to regulatory reporting and public dissemination. The Commission notes that many types of security-based swap transactions that are executed on a platform or effected by or through a registered broker-dealer are already subject to Regulation SBSR—for example, if either side includes a U.S. person[449] or a registered person,[450] or if the transaction is accepted for clearing at a clearing agency having its principal place of business in the United States.[451] Thus, proposed Rules 908(a)(1)(iii) and 908(a)(1)(iv) would have had the effect of extending regulatory reporting and public dissemination requirements to transactions occurring on a platform having its principal place of business in the United States or executed by or through a registered broker-dealer only when the counterparties consist exclusively of unregistered non-U.S. persons. In addition, proposed Rules 908(a)(1)(iii) and 908(a)(1)(iv) would have extended the public dissemination requirement to transactions involving a registered foreign security-based swap dealer that are executed on a platform or through a registered broker-dealer and not otherwise subject to public dissemination (e.g., because there is a U.S. person on the other side).[452]

Two commenters generally opposed these amendments.[453] One of these commenters stated that transactions between non-U.S. persons that have no U.S.-person guarantor—which

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449 See Rule 908(a)(1)(i).

450 See Rule 908(a)(2).

451 See Rule 908(a)(1)(ii).

452 Under existing Rule 908(a)(2), transactions involving a registered foreign security-based swap dealer or registered foreign security-based swap market participant that do not otherwise fall within existing Rule 908(a)(1) are subject to regulatory reporting but not public dissemination.

453 See IIB Letter at 15, 17; SIFMA/FSR Letter at 12-14.

would include transactions covered by proposed Rules 908(a)(1)(iii), (iv), and (v)—should not be subject to regulatory reporting or public dissemination in the United States because they lack the requisite nexus to the United States.[454] The other commenter expressed the view that these requirements should not apply to the security-based swaps of non-U.S. persons unless they involve a registered security-based swap dealer.[455] The commenter added that proposed Rule 908(a)(1)(iv) could provide incentives for non-U.S. counterparties to avoid transacting through registered broker-dealers, resulting in market fragmentation that would lead to adverse effects on risk management, market liquidity, and U.S. jobs.[456]

The Commission continues to believe that any transaction executed on a platform that has its principal place of business in the United States should be subject to regulatory reporting and public dissemination, even when the transaction involves two non-U.S. persons that are not engaged in dealing activity in connection with the transaction.[457] Transactions executed on a platform having its principal place of business in the United States are consummated within the United States and therefore exist, at least in part, in the United States.[458] Requiring these security-based swaps to be reported will permit the Commission and other relevant authorities to observe, in a registered SDR, all transactions executed on U.S. platforms and to carry out oversight of such transactions. With respect to public dissemination of platform-executed security-based swaps, the Commission notes that it would be inconsistent if a subset of the

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454 See SIFMA/FSR Letter at 12.

455 See IIB Letter at 15-17.

456 See id. at 16-17. As discussed in the subsection immediately above, the commenter also raised these concerns with respect to ANE transactions.

457 See U.S. Activity Proposal, 80 FR at 27484.

458 See id.

transactions executed on U.S. platforms—those involving unregistered non-U.S. counterparties—were not subject to public dissemination, while all other transactions executed on U.S. platforms were subject to public dissemination. Furthermore, the Commission understands that platforms typically engage in the practice of disseminating information about completed transactions to their own participants. Accordingly, the Commission believes that it would be anomalous for a platform to broadcast information about a transaction involving two non-U.S. counterparties to its participants if such transaction were not also included within Regulation SBSR's public dissemination requirements.

As the Commission previously noted in the U.S. Activity Proposal,[459] registered broker-dealers play a key role as intermediaries in the U.S. financial markets. To improve the integrity and transparency of those markets, the Commission believes that the Commission and other relevant authorities should have ready access to detailed information about the security-based swap transactions that such persons intermediate. Furthermore, the Commission believes that public dissemination of security-based swap transactions intermediated by a registered broker-dealer will provide useful information about prevailing market prices in the U.S. security-based swap market, and that regulatory reporting of such transactions will assist the Commission and other relevant authorities in overseeing the U.S. security-based swap market. Such reporting also will assist the Commission in overseeing the activities of market intermediaries that it registers.

The Commission agrees that there is some possibility that requiring the regulatory reporting and public dissemination of security-based swaps between unregistered non-U.S. persons that are intermediated by registered broker-dealers could create an incentive for those non-U.S. persons to avoid transacting through a registered broker-dealer. However, a rule that

459 See 80 FR at 27485.

failed to capture these transactions could provide unregistered non-U.S. persons a competitive advantage over unregistered U.S. persons. The security-based swap transactions of U.S. persons effected by or through a registered broker-dealer are subject to Regulation SBSR, while the transactions between unregistered non-U.S. persons effected by or through a registered broker-dealer would not be subject to Regulation SBSR. Absent Rules 908(a)(1)(iii) and 908(a)(1)(iv), a registered broker-dealer (or platform) might be able offer its services at a lower price to non-U.S. persons than to U.S. persons, because the platform or registered broker-dealer would not have to embed the potential costs of regulatory reporting and public dissemination when pricing services offered to non-U.S. persons. By contrast, the price offered by the platform or registered broker-dealer to U.S. persons would likely reflect these additional costs. The Commission does not see a basis for permitting non-U.S. persons to enjoy this competitive advantage over U.S. persons when engaging in security-based swap transactions that, due to the involvement of a U.S. platform or registered broker-dealer, exist at least in part within the United States. Accordingly, the Commission declines to adopt the commenters' recommendation that the Commission exclude from Regulation SBSR the transactions of unregistered non-U.S. persons that are effected by or through a registered broker-dealer.

E. Public Dissemination of Covered Cross-Border Transactions

Existing Rule 908(a)(1)(i) requires regulatory reporting and public dissemination of a security-based swap if there is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction. This would include, for example, a security-based swap having, on one side, a direct counterparty who is not a U.S. person but has a U.S. guarantor, and the other side includes no counterparty that is a U.S. person, registered security-based swap dealer, or

registered major security-based swap participant (a "covered cross-border transaction").[460] As discussed in the U.S. Activity Proposal, this treatment of covered cross-border transactions represented a departure from the re-proposed approach described in the Cross-Border Proposing Release, which would have excepted covered cross-border transactions from the public dissemination requirement.[461] The Commission noted, however, that it had determined to continue considering whether to except covered cross-border transactions from the public dissemination requirement and that it would solicit additional comment regarding whether such an exception would be appropriate.[462]

In the U.S. Activity Proposal, the Commission expressed its preliminary view that—in light of its determination to require all security-based swap transactions of U.S. persons, including all transactions conducted through a foreign branch, to be publicly disseminated—it did not think that it would be appropriate to exempt covered cross-border transactions from the public dissemination requirement.[463] As the Commission had previously noted in the Regulation SBSR Adopting Release,[464] a security-based swap transaction involving a U.S. person that guarantees a non-U.S. person exists, at least in part, within the United States, and the economic reality of these transactions is substantially identical to transactions entered into directly by a U.S. person (including through a foreign branch). Subjecting transactions through a foreign

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460 As in the Regulation SBSR Adopting 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. See Regulation SBSR Adopting Release, 80 FR at 14653, n. 827.

461 See U.S. Activity Proposal, 80 FR at 27485 (citing Cross-Border Proposing Release, 78 FR at 31062).

462 See U.S. Activity Proposal, 80 FR at 27485.

463 See id.

464 See Regulation SBSR Adopting Release, 80 FR at 14653.

branch to public dissemination but excluding transactions involving a U.S.-person guarantor would treat these economically substantially identical transactions differently, and could create competitive disparities among U.S. persons, depending on how they structured their businesses. Thus, a U.S. person that engages in security-based swap transactions through a guaranteed foreign subsidiary could carry out an unlimited volume of covered cross-border transactions without being subject to the public dissemination requirement, while another U.S. person that engaged in similar transactions through a foreign branch would be subject to the public dissemination requirement.[465]

Two commenters disagreed with the Commission's proposed treatment of covered cross-border transactions.[466] One of these commenters argued that the financial risks of such transactions lie outside the United States, and that the presence of a U.S.-person guarantor would not make the pricing information relating to the transaction relevant to the U.S. market.[467] The other commenter argued not only that covered cross-border transactions should be exempt from public dissemination, but that the Commission should expand this exemption to include transactions in which both sides include a U.S.-person guarantor but neither side includes a registered security-based swap dealer or major security-based swap participant, or a U.S. person as a direct counterparty.[468] The commenter argued that, because these transactions take place

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

466 See ISDA I at 13-14; SIFMA/FSR Letter at 14.

467 See ISDA I at 14.

468 See id.

outside the United States and are between two unregistered non-U.S. persons, "there is insufficient U.S. jurisdictional nexus to justify the public dissemination of the security-based swap data in the United States."[469]

The Commission disagrees with the commenter's assertions that the financial risks of covered cross-border transactions lie outside the United States and that there is insufficient U.S. jurisdictional nexus to justify the public dissemination of these transactions in the United States. As the Commission noted in the Regulation SBSR Adopting Release, a security-based swap having an indirect counterparty that is a U.S. person is economically equivalent to a security-based swap with a U.S.-person direct counterparty, and both kinds of security-based swaps exist, at least in part, within the United States.[470] The presence of a U.S. guarantor facilitates the activity of the non-U.S. person who is guaranteed and, as a result, the security-based swap activity of the non-U.S. person cannot reasonably be isolated from the U.S. person's activity in providing the guarantee.[471] The financial resources of the U.S. guarantor could be called upon to satisfy the contract if the direct counterparty fails to meet its obligations; thus, the extension of a guarantee is economically equivalent to a transaction entered into directly by the U.S. guarantor.[472] Because a U.S. guarantor might be obligated to perform under the guarantee, the Commission disagrees with the commenter's assertion that the financial risks of covered cross-border transactions lie outside the United States.

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469 Id. However, the commenter did not object to subjecting these transactions to regulatory reporting to a registered SDR. See id.

470 See 80 FR at14653.

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

472 See id.

With respect to the commenter's view that covered cross-border transactions lack sufficient jurisdictional nexus to justify their public dissemination in the United States, the Commission takes the position that, under the territorial approach to Title VII described in the Regulation SBSR Adopting Release,[473] any security-based swap guaranteed by a U.S. person exists at least in part within the United States, which triggers the application of Title VII requirement for public dissemination.[474] In the Regulation SBSR Adopting Release, the Commission noted that the transparency benefits of requiring public dissemination of security-based swaps involving at least one U.S.-person direct counterparty would inure to other U.S. persons and the U.S. market generally, as other participants in the U.S. market are likely to transact in the same or related instruments.[475] In addition, the economic reality of covered cross-border transactions is substantially identical to transactions entered into directly by a U.S. person (including through a foreign branch).[476] Excluding covered cross-border transactions from public dissemination would treat these economically similar transactions differently, potentially creating competitive disparities among U.S. persons, depending on how they have structured their business.[477] To avoid such competitive disparities and to further the transparency goals of

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473 See 80 FR at 14649-50.

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

475 See 80 FR at 14651.

476 See U.S. Activity Proposal, 80 FR at 27485.

477 See id. However, if the transactions of a guaranteed non-U.S. person are subject to regulatory reporting and public dissemination requirements in a foreign jurisdiction and the Commission finds that the foreign requirements are comparable to those imposed by Regulation SBSR and other conditions set forth in Rule 908(c) are met, such transactions could be eligible for substituted compliance.

Title VII, the Commission believes that it is necessary and appropriate to require the public dissemination of covered cross-border transactions.

F. Expanding Rule 908(b)

Existing Rule 908(b) provides that, notwithstanding any other provision of Regulation SBSR, a person shall not incur any obligation under Regulation SBSR unless it is a U.S. person, a registered security-based swap dealer, or a registered major security-based swap participant. Rule 908(b) is designed to clarify the cross-border application of Regulation SBSR by specifying the types of counterparties that would and would not be subject to any duties under Regulation SBSR; if a person does not fall within any of the categories enumerated by Rule 908(b), it would not incur any duties under Regulation SBSR.[478] Rule 908(b) was designed to reduce regulatory assessment costs and provide greater legal certainty to counterparties engaging in cross-border security-based swaps.

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

In the Regulation SBSR Proposed Amendments Release, the Commission expressed the preliminary view that all platforms and registered clearing agencies should incur the reporting duties specified in the proposed amendments to Rule 901(a),[479] even if they are not U.S. persons. Consistent with this view, the Commission proposed to expand Rule 908(b) to include any platform or registered clearing agency as among the persons that may incur duties under Regulation SBSR.[480] To the extent that a platform or registered clearing agency is a U.S. person, such entity falls within existing Rule 908(b)(1). Thus, the effect of this proposed amendment to

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478 See Regulation SBSR Adopting Release, 80 FR at 14656.

479 See Regulation SBSR Proposed Amendments Release, 80 FR at 14759.

480 See id.

Rule 908(b) would be to include within the rule any platform or registered clearing agency that is not a U.S. person.

Three commenters generally supported expanding Rule 908(b) to include all platforms and registered clearing agencies.[481]

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

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

In the U.S. Activity Proposal, the Commission proposed to add a new subparagraph (5) to Rule 908(b) to include any non-U.S. person that, in connection with such person's security-based swap dealing activity, arranges, negotiates, or executes a security-based swap using its personnel located in a U.S. branch or office, or using personnel of its agent located in a U.S. branch or office. Consistent with the proposed amendments to Rule 901(a)(2)(ii)(E) that would bring foreign dealing entities engaging in ANE transactions into the reporting hierarchy,[482] the Commission also proposed to add all non-U.S. persons engaging in ANE transactions into Rule 908(b). Because existing Rule 908(b)(2) already covers a non-U.S. person that is registered as a security-based swap dealer, the effect of proposed Rule 908(b)(5) would be to cover a non-U.S.

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481 See DTCC Letter at 18; LCH.Clearnet Letter at 11; ISDA/SIFMA Letter at 29 ("a registered platform or clearing agency should be responsible for reporting [security-based swaps] as specified in Proposed SBSR regardless of its U.S. person status").

482 See supra Section IX(C).

person that engages in dealing activity in the United States but that does not meet the de minimis threshold and thus would not be required to register as a security-based swap dealer.[483]

The Commission received no comments that specifically addressed this proposed amendment[484] and, for the reasons discussed in the U.S. Activity Proposal, is adopting Rule 908(b)(5) as proposed. Accordingly, Rule 908(b)(5) provides that a non-U.S. person that, in connection with such person's security-based swap dealing activity, arranged, negotiated, or executed the security-based swap using its personnel[485] located in a U.S. branch or office, or using personnel of an agent located in a U.S. branch or office, may incur reporting duties under Regulation SBSR.

G. Reporting Duties of Unregistered Persons

1. Description of Proposed Rules

Existing Rule 901(a)(2)(ii) sets forth a reporting hierarchy that specifies the side that has the duty to report a security-based swap, taking into account the types of entities present on each

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483 See U.S. Activity Proposal, 80 FR at 27486.

484 However, two commenters noted that requiring the reporting of ANE transactions would place burdens on unregistered entities that do not have reporting infrastructure in place and would be compelled to engage third-party providers to report transactions. See ISDA I at 11; SIFMA/FSR Letter at 13. In addition, as discussed in Section IX(C)(2), supra, one commenter urged the Commission to eliminate the application of the U.S. Activity Proposal to Regulation SBSR. See ISDA I at 2; ISDA II at 3. These comments are addressed in Sections X(C)(7) and XII(A)(1)(d), infra.

485 The Commission intends the final rule to indicate the same type of activity by personnel located in the United States as described in Section IV(C)(3) of the U.S. Activity Adopting Release, 81 FR at 8624. Moreover, for purposes of Rule 908(b)(5), the Commission interprets the term "personnel" in a manner consistent with the definition of "associated person of a security-based swap dealer" contained in Section 3(a)(70) of the Exchange Act, 15 U.S.C. 78c(a)(70), regardless of whether such non-U.S. person or such non-U.S. person's agent is itself a security-based swap dealer. See U.S. Activity Adopting Release, 81 FR at 8624 (discussing the Commission's interpretation of the term "personnel" for purposes of Rule 3a71-3(b)(1)(iii)(C)).

side. Existing Rule 901(a)(2)(ii) does not assign reporting obligations for transactions involving unregistered non-U.S. persons. In the Regulation SBSR Adopting Release, the Commission stated that it anticipated soliciting further comment regarding the duty to report a security-based swap where neither side includes a registered security-based swap dealer or a registered major security-based swap participant and neither side includes a U.S. person or only one side includes a U.S. person.[486] In the U.S. Activity Proposal, the Commission proposed amendments to Rule 901(a)(2)(ii)(E) that would assign the duty to report such transactions.

As discussed in the U.S. Activity Proposal and in the Regulation SBSR Adopting Release, one commenter raised concerns about burdens that the previously re-proposed reporting hierarchy might place on U.S. persons in transactions with certain non-U.S.-person counterparties.[487] Under the previous proposal, in a transaction between a non-U.S. person and a U.S. person where neither side included a security-based swap dealer or major security-based swap participant, the U.S. person would have had the duty to report. The commenter noted that in such transactions the non-U.S.-person counterparty might be engaged in dealing activity but at levels below the security-based swap dealer de minimis threshold and the U.S. person might not be acting in a dealing capacity in any of its security-based swap transactions. The commenter argued that, in such cases, the non-U.S. person may be better equipped to report the transaction and, accordingly, that when two unregistered persons enter into a security-based swap, the counterparties should be permitted to select which counterparty would report, even if one counterparty is a U.S. person.[488]

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486 See 80 FR at 14600, 14655.

487 See IIB Letter, passim; Letter from Institute of International Bankers to the Commission, dated August 21, 2013.

488 See U.S. Activity Proposal, 80 FR at 27486.

The U.S. Activity Proposal included proposed Rule 901(a)(2)(ii)(E)(2), which the Commission proposed to address concerns arising when a non-U.S. person is engaged in ANE transactions. Under the proposed rule, in a transaction between an unregistered U.S. person and an unregistered non-U.S. person who is engaging in ANE activity, the sides would be required to select which side is the reporting side. Also under proposed Rule 901(a)(2)(ii)(E)(2), if both sides are unregistered non-U.S. persons and both are engaging in ANE activity, the sides would be required to select the reporting side.

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

Proposed Rule 901(a)(2)(ii)(E)(4) was designed to address the scenario where neither side includes a counterparty that falls within Rule 908(b)—i.e., neither side includes a registered

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489 See id.

490 See id.

person, a U.S. person, or a non-U.S. person engaging in ANE activity—but the transaction is effected by or through a registered broker-dealer (including a registered SB SEF). In such case, the proposed rule would require the registered broker-dealer to report the transaction. The Commission preliminarily believed that the registered broker-dealer generally would be more likely than the unregistered non-U.S. counterparties (none of which are engaging in ANE activity with respect to that particular transaction) to have the ability to report the transaction given its presence in the United States and its familiarity with the Commission's regulatory requirements.[491]

2. Discussion of Comments and Final Rules

a. Transactions Where One or Both Sides Consist Only of Unregistered Persons

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

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491 See id.

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

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492 See ISDA I at 11-12; SIFMA/FSR Letter at 12-13.

493 See id.

494 See ISDA II at 6 ("The burden of exchanging and using this data is much greater in advance of SBSD registration since instead of relying on party level static data (such as for registration status) to apply the reporting hierarchy in SBSR in most cases, the parties may instead need to obtain and rely on transaction level party data for the U.S. Person status of the indirect counterparty or an indication of whether a non-U.S. Person with dealing activity has used U.S. personnel for ANE on each SBS") (emphasis added). The other commenter also argued that there would be significant costs and problems associated with the Commission's proposed rule. See SIFMA/FSR Letter at 12. The commenter recommended, however, that, "[i]f the Commission does expand the application of Regulation SBSR's regulatory reporting requirements to include transactions between two non-U.S. persons, reporting obligations triggered by U.S.-located conduct should only be triggered for registered security-based swap dealers," and

As discussed in Section X, infra, the Commission is adopting a revised compliance schedule that aligns Regulation SBSR compliance with the registration of security-based swap dealers. The Commission believes that foreign dealing entities that will register with the Commission as security-based swap dealers will be counterparties to the vast majority of security-based swaps involving foreign dealing entities engaging in U.S. activity.[495] Such entities will thus occupy the highest rung of the reporting hierarchy. U.S. non-dealing entities that transact with registered foreign security-based swap dealers will not have to engage in any assessment of or negotiation with the other side, because reporting duties associated with these transactions will arise from the foreign security-based swap dealers' registration status rather than any ANE activity in which they might engage.

The Commission recognizes that, even after security-based swap dealer registration occurs, there likely will be a small number of foreign dealing entities that remain below the de minimis threshold and thus will not have to register as security-based swap dealers. Such an unregistered foreign dealing entity—when utilizing U.S. personnel to arrange, negotiate, or execute a security-based swap—would be subject to Rule 901(a)(2)(ii)(E)(2) if it transacts with a U.S. person or another unregistered foreign dealing entity that is engaging in ANE activity with respect to that transaction. In such case, the sides generally will have equal capacity to carry out the reporting duty; therefore, Rule 901(a)(2)(ii)(E)(2) requires the sides to select the reporting side. An unregistered foreign dealing entity would be subject to Rule 901(a)(2)(ii)(E)(3) if it

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acknowledged that requiring compliance after security-based swap dealers were registered "would lessen the burden imposed by the expansion of reporting requirements on unregistered entities and those parties not acting in a dealing capacity." Id. at 13.

495 See supra Section II(A)(5), where the Commission notes that ISDA-recognized dealers (both U.S. and foreign) are involved in 74% of North American corporate single-name CDS transactions. The Commission believes that all ISDA-recognized dealers will be registered as security-based swap dealers.

transacts with any unregistered foreign entity (including a foreign non-dealing entity or a foreign dealing entity that is not engaging in ANE activity with respect to that transaction). This approach places the duty to report directly on the only side that includes a person that is subject to Rule 908(b). The Commission estimates that only four foreign dealing entities will incur reporting obligations under new Rules 901(a)(2)(ii)(E)(2) and 901(a)(2)(ii)(E)(3).[496]

Requiring additional ANE transactions of these foreign dealing entities to be reported—and requiring the foreign dealing entity and the other side to select the reporting side in a tie situation under Rule 901(a)(2)(ii)(E)(2) or requiring the foreign dealing entity to become the reporting side directly when it falls under Rule 901(a)(2)(ii)(E)(3)—will enhance the Commission's ability to oversee security-based swap dealing activity occurring with the United States and to monitor for compliance with specific Title VII requirements, including the requirement that a person register with the Commission as a security-based swap dealer if it exceeds the de minimis threshold. The Commission recognizes that unregistered foreign dealing entities (and other unregistered persons when they transact with unregistered foreign dealing entities) may incur costs in assessing whether these rules apply to their transactions.[497] However, requiring these ANE transactions to be publicly disseminated will further enhance the level of transparency in the U.S. security-based swap market, potentially promoting greater price efficiency by reducing implicit transaction costs.

One commenter recommended that, in a transaction between an unregistered U.S. person and an unregistered non-U.S. person engaged in ANE activity, the Commission should not

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496 See infra Section XII(B).

497 See U.S. Activity Adopting Release, 81 FR at 8626-29 (estimating assessment costs of foreign dealing entities to count transactions toward the de minimis thresholds under Exchange Act Rules 3a71-3(b)(1)(iii)(C) and 3a71-5(c), even if some of them do not cross the thresholds and thus are not required to register as security-based swap dealers).

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

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

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498 See ICI Global Letter at 7.

499 See id.

500 Id.

to the U.S. person), the U.S. person could elect to trade with one of several registered security-based swap dealers, both U.S. and foreign, for whom reporting obligations would attach by operation of Rule 901(a)(2)(ii)(B),[501] and negotiation about which side would incur the reporting duty would not be necessary.

b. Transactions Involving a Registered Broker-Dealer

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

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501 Rule 901(a)(2)(ii)(B) provides that, if only one side of a security-based swap includes a registered security-based swap dealer, that side shall be the reporting side.

502 See ISDA I at 14; SIFMA/FSR Letter at 14.

503 See ISDA I at 14.

504 See SIFMA/FSR Letter at 14.

505 See ISDA I at 14; SIFMA/FSR Letter at 14.

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

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

The Commission further acknowledges that life cycle events for the transactions covered by Rule 901(a)(2)(ii)(E)(4) will not be reported. Under Rule 901(e), the reporting side for a security-based swap transaction is obligated to report life cycle event information for the transaction. Security-based swaps covered by Rule 901(a)(2)(ii)(E)(4) must be reported by a registered broker-dealer (including a registered SB SEF), not one of the sides. Thus, security-based swaps covered by Rule 901(a)(2)(ii)(E)(4) do not have a reporting side, and neither side will have an obligation to report life cycle event information for the transaction. The

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506 See ISDA I at 14.

507 See U.S. Activity Proposal, 80 FR at 27485.

508 See id.

509 See Rule 906(c).

Commission believes, however, that the reports of these transactions, even without subsequent life cycle event reporting, will provide important information to the Commission and to market participants at the time of execution. In any event, the Commission expects that relatively few transactions will fall within Rule 901(a)(2)(ii)(E)(4).[510]

Finally, the Commission is modifying Rule 901(a)(2)(ii)(E)(4) so that the reporting requirement for a registered broker-dealer under Rule 901(a)(2)(ii)(E)(4) parallels the reporting requirement for a platform under final Rule 901(a)(1). The Commission believes that this change is appropriate because a registered broker-dealer, like a platform, is unlikely to know and could not without undue difficulty obtain many of the data elements contemplated by Rule 901(d). Furthermore, in many cases, a registered broker-dealer that falls within Rule 901(a)(2)(ii)(E)(4) also will be an SB SEF. Rule 901(a)(2)(ii)(E)(4), as proposed, would have required a registered broker-dealer (including a registered SB SEF) to report the information required under Rules 901(c) and 901(d). In contrast, final Rule 901(a)(2)(ii)(E)(4) requires a registered broker-dealer (including a registered SB SEF) to report only the information set forth in Rules 901(c) (except that, with respect to Rule 901(c)(5), the registered broker-dealer (including a registered SB SEF) will be required to indicate only if both direct counterparties are registered security-based swap dealers), 901(d)(9), and 901(d)(10)—in other words, the same information that a platform is required to report when it incurs a reporting duty under new Rule 901(a)(1). By eliminating the need for a registered broker-dealer to report certain data elements under Rule 901(d) that the registered broker-dealer is unlikely to know and could not learn

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510 See infra note 663 (estimating that only 540 of 3,000,000 reportable events under Regulation SBSR will result from broker-dealers having to report transactions pursuant to new Rule 901(a)(2)(ii)(E)(4)).

without undue difficulty,[511] the Commission believes that the revision will help to avoid placing undue reporting burdens on registered broker-dealers (including registered SB SEFs) that incur duties as a result of new Rule 901(a)(2)(ii)(E)(4).

H. Conforming Amendments

1. Expanding Definition of "Participant"

Rule 900(u), as adopted in the Regulation SBSR Adopting Release, defined a "participant" of a registered SDR as "a counterparty, that meets the criteria of [Rule 908(b) of Regulation SBSR], of a security-based swap that is reported to that [registered SDR] to satisfy an obligation under [Rule 901(a) of Regulation SBSR]." In the Regulation SBSR Proposed Amendments Release, the Commission proposed an amendment to expand the definition of "participant" to include registered clearing agencies and platforms[512] and, as described above, has adopted that amendment as proposed. In the U.S. Activity Proposal, the Commission proposed to further amend the definition of "participant" to include a registered broker-dealer that is required by Rule 901(a) to report a security-based swap if it effects a transaction between unregistered non-U.S. persons that do not fall within proposed Rule 908(b)(5).[513]

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511 While the registered broker-dealer would presumably know the primary economic terms of a transaction that it is effecting, it might not know or be in a position to easily learn about the bilateral documentation that exists between the counterparties to support transactions between those counterparties. Thus, the registered broker-dealer might not be in a position to report the title and date of any master agreement, collateral agreement, margin agreement, or other agreement incorporated by reference into a security-based swap, as contemplated by Rule 901(d)(4).

512 See supra Section V(A).

513 See 80 FR at 27487. As in Section IX(G), supra, Rule 901(a)(2)(ii)(E)(4), as adopted herein, requires a registered broker-dealer (including a registered SB SEF) to report a security-based swap in cases where the registered broker-dealer effects a transaction between unregistered non-U.S. persons that do not fall within Rule 908(b)(5).

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

2. Rule 901(d)(9)

Existing Rule 901(d)(9) requires the reporting, if applicable, of the platform ID of the platform on which a security-based swap is executed. In the Regulation SBSR Adopting Release, the Commission recognized the importance of identifying the venue on which a security-based swap is executed because this information should enhance the ability of relevant authorities to conduct surveillance in the security-based swap market and understand developments in the security-based swap market generally.[514] In the U.S. Activity Proposal, the Commission proposed to amend Rule 901(d)(9) also to require the reporting, if applicable, of the broker ID of a registered broker-dealer (including a registered SB SEF) that is required by Rule 901(a)(2)(ii)(E)(4) to report a security-based swap effected by or through the registered broker-dealer.

The Commission received no comments regarding the proposed amendment to Rule 901(d)(9) and is adopting this amendment as proposed. The Commission continues to believe, as discussed in the U.S. Activity Proposal,[515] that being able to identify the registered broker-dealer

514 See Regulation SBSR Adopting Release, 80 FR at 14589.

515 See 80 FR at 27487.

that effects a security-based swap transaction in the manner described in Rule 901(a)(2)(ii)(E)(4) will enhance the Commission's understanding of the security-based swap market and improve the ability of the Commission and other relevant authorities to conduct surveillance of security-based swap market activities.

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

As discussed above, Rule 900(u), as amended herein, expands the definition of "participant" to include a registered broker-dealer that incurs the reporting obligation if it effects a transaction between two unregistered non-U.S. persons that do not fall within Rule 908(b)(5). Existing Rule 906(b) generally requires a participant of a registered SDR to provide the identity of any ultimate parent and any of its affiliates that also are participants of that registered SDR. In the Regulation SBSR Proposed Amendments Release, the Commission proposed to except platforms and registered clearing agencies from Rule 906(b)[516] and, as described above, is adopting that amendment today.[517] In the U.S. Activity Proposal, the Commission proposed to further amend Rule 906(b) to except from the duty to provide ultimate parent and affiliate information a registered broker-dealer that becomes a participant solely as a result of making a report to satisfy an obligation under Rule 901(a)(2)(ii)(E)(4).[518]

The Commission received no comments regarding the amendment to Rule 906(b) proposed in the U.S. Activity Proposal and is adopting this amendment as proposed. The

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516 See Regulation SBSR Proposed Amendments Release, 80 FR at 14645.

517 See supra Section V(D).

518 However, a registered broker-dealer would have to comply with Rule 906(b) if it became a participant of a registered SDR for another reason—e.g., the broker-dealer is a U.S. person and is a counterparty to a security-based swap that is reported to the registered SDR on a mandatory basis.

Commission continues to believe, as it stated in the U.S. Activity Proposal,[519] that the purposes of Rule 906(b)—namely, facilitating the Commission's ability to measure derivatives exposure within the same ownership group—would not be advanced by applying the requirement to a registered broker-dealer that incurs reporting obligations solely because it effects a transaction between two unregistered non-U.S. persons that do not fall within Rule 908(b)(5). A registered broker-dealer acting solely as a broker with respect to a security-based swap is not taking a principal position in the security-based swap. To the extent that such a registered broker-dealer has an affiliate that transacts in security-based swaps, such positions could be derived from other transaction reports indicating that affiliate as a counterparty.

The Commission proposed to make a conforming amendment to Rule 907(a)(6). In the Regulation SBSR Proposed Amendments Release, the Commission proposed, and today is adopting,[520] an amendment to Rule 907(a)(6) that will require a registered SDR to have policies and procedures "[f]or periodically obtaining from each participant other than a platform or a registered clearing agency information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and counterparty IDs."[521] In the U.S. Activity Proposal, the Commission proposed to further amend Rule 907(a)(6) to except a registered broker-dealer that incurs reporting obligations solely because it effects a transaction between two unregistered non-U.S. persons that do not fall within Rule

519 See 80 FR at 27488.

520 See supra Section V(D).

521 Once a participant reports parent and affiliate information to a registered SDR, Rule 906(b) requires the participant to "promptly notify the registered [SDR] of any changes" to its parent and affiliate information.

908(b)(5). [522] The Commission received no comments regarding the proposed amendment to Rule 907(a)(6) and is adopting the amendment as proposed. Because such a broker-dealer has no duty under Rule 906(b), as amended, to provide such information to a registered SDR, no purpose would be served by requiring the registered SDR to have policies and procedures for obtaining this information from the broker-dealer.

I. Availability of Substituted Compliance

Existing Rule 908(c)(1) describes the possibility of substituted compliance with respect to regulatory reporting and public dissemination of security-based swap transactions. Substituted compliance could be available for transactions that will become subject to Regulation SBSR because of the amendments to Rule 908 being adopted today. Under Rule 908(c)(1), a security-based swap is eligible for substituted compliance with respect to regulatory reporting and public dissemination if at least one of the direct counterparties to the security-based swap is either a non-U.S. person or a foreign branch. As discussed in the U.S. Activity Proposal, existing Rule 908(c) does not condition substituted compliance eligibility on where a particular transaction was arranged, negotiated, or executed.[523] Thus, Rule 908(c) permits a security-based swap between a U.S. person and the New York branch of a foreign bank (i.e., a non-U.S. person utilizing U.S.-located personnel) potentially to be eligible for substituted compliance, if the transaction is also subject to the rules of a foreign jurisdiction that is the subject of a Commission substituted compliance order.

The rules adopted today, among other things, subject to regulatory reporting and public dissemination both ANE transactions and security-based swaps executed on a U.S. platform or

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522 See U.S. Activity Proposal, 80 FR at 27488.

523 See id.

effected by a registered broker-dealer. The Commission did not propose, and is not adopting, any amendment to Rule 908(c) that would limit the availability of substituted compliance for such transactions based on the location of the relevant activity. Thus, a transaction that is required to be reported and publicly disseminated because it is an ANE transaction, or because it is executed on a U.S. platform or effected by or through a registered broker-dealer, could be eligible for substituted compliance if the Commission issues a substituted compliance order with respect to regulatory reporting and public dissemination of security-based swaps applying to that jurisdiction. This approach is consistent with the Commission's decision when adopting Rule 908(c) that certain transactions involving U.S.-person counterparties could be eligible for substituted compliance (i.e., when the transaction is through the foreign branch of the U.S. person) even if the non-U.S.-person counterparty has engaged in dealing activity in connection with the transaction in the United States. One commenter who generally opposed the regulatory reporting and public dissemination requirements proposed in the U.S. Activity Proposal specifically supported the Commission's approach to substituted compliance.[524]

Finally, several commenters expressed the view that reporting pursuant to Regulation SBSR should not begin until the Commission has made substituted compliance determinations.[525] As discussed in Section X(C)(5), infra, the Commission does not believe that

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524 See IIB Letter at 15, 17.

525 See ISDA I at 15 (stating that the reporting of security-based swap transactions of non-U.S. registered persons with other non-U.S. persons should not be required until a cross-border analysis has been understand and substituted compliance determinations have been made); ISDA/SIFMA Letter at 19 (stating that the security-based swap transactions of non-U.S. registered security-based swap dealers should not be required until the Commission has analyzed reporting regimes in other jurisdictions and made relevant substituted compliance determinations, consistent with the CFTC's determination to provide time-limited exemptive relief for swaps between non-U.S. swap dealers and non-U.S. persons while the CFTC analyzes the cross-border implications of reporting);

it is necessary or appropriate to defer compliance with Regulation SBSR until after the Commission makes one or more substituted compliance determinations.[526]

X. Compliance Schedule for Regulation SBSR

In the Regulation SBSR Adopting Release, the Commission established a compliance date only for Rules 900, 907, and 909 of Regulation SBSR.[527] In the Regulation SBSR Proposed Amendments Release, the Commission proposed a new compliance schedule for Rules 901, 902, 903, 904, 905, 906, and 908 of Regulation SBSR.[528] The Commission believed that proposing a new compliance schedule was necessary in light of the fact that industry infrastructure and capabilities had changed since the initial proposal,[529] particularly because the CFTC regime for swap data reporting and dissemination had become operational. The Commission received 13 comments that discuss the proposed compliance schedule. After careful consideration of these comments, the Commission is adopting a revised compliance schedule, as described in detail below.

A. Proposed Compliance Schedule

SIFMA/FSR Letter at 15 (asking the Commission to defer compliance with Regulation SBSR "until [the Commission] has the opportunity to make comparability determinations for key non-U.S. jurisdictions, including Australia, Canada, the European Union, Japan and Switzerland," and stating that "Requiring the changes to systems, personnel and trade flows necessary to comply with [the U.S. Activity Proposal] only to later be granted substituted compliance would impose significant and unnecessary burdens for negligible short-term benefits").

526 See also infra Section XII(A)(7).

527 See 80 FR at 14564. The compliance date for Rules 900, 907, and 909 was also the effective date of Regulation SBSR: May 18, 2015.

528 See 80 FR at 14762-70.

529 See 80 FR at 14762. See also Regulation SBSR Proposing Release, 75 FR at 75242-45 (proposing Rules 910 and 911 to explain compliance dates and related implementation requirements).

The Commission proposed the following phased-in compliance schedule for Rules 901, 902, 903, 904, 905, 906, and 908 of Regulation SBSR.[530] First, the Commission proposed a Compliance Date 1 to be the date six months after the first registered SDR that can accept reports of security-based swaps in a particular asset class commences operations as a registered SDR. On proposed Compliance Date 1, persons with a duty to report security-based swaps under Regulation SBSR would have been required to report all newly executed security-based swaps in that asset class to a registered SDR. After proposed Compliance Date 1, persons with a duty to report security-based swaps also would have a duty to report any life cycle events of any security-based swaps that previously had been required to be reported. In addition, under the proposed compliance schedule, transitional and pre-enactment security-based swaps would also have been reported, to the extent information was available, to a registered SDR that accepts reports of security-based swap transactions in the relevant asset class by proposed Compliance Date 1.[531] The Commission also proposed a Compliance Date 2, which would have been nine months after the first registered SDR that can accept security-based swaps in a particular asset class commences operations as a registered SDR (i.e., three months after proposed Compliance Date 1). On proposed Compliance Date 2, each registered SDR in that asset class would have had to comply with Rules 902 (regarding public dissemination), 904(d) (requiring dissemination of transaction reports held in queue during normal or special closing hours), and 905 (with

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530 See Regulation SBSR Proposed Amendments Release, 80 FR at 14762-70.

531 A transitional security-based swap is "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." See Rule 900(nn). A pre-enactment security-based swap is "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." See Rule 900(y).

respect to public dissemination of corrected transaction reports) for all security-based swaps in that asset class—except for covered cross-border transactions.[532]

The proposed compliance schedule with respect to security-based swaps in a particular asset class was tied to the commencement of operations of a registered SDR that can accept reports of security-based swaps in that asset class. In the Regulation SBSR Proposed Amendments Release, the Commission noted that both registered SDRs and persons with a duty to report would need time to make preparations related to the reporting of security-based swaps.[533] The proposed compliance schedule was not, however, linked to security-based swap dealer registration.

B. General Summary of Comments Received

Commenters expressed a variety of concerns with the proposed compliance schedule. Most of the comments that addressed the proposed compliance schedule urged the Commission to delay implementation of Regulation SBSR until after security-based swap dealers are registered as such with the Commission.[534] Commenters generally expressed concerns with the costs and burdens of implementing Regulation SBSR ahead of the SBS entities registration compliance date, particularly the costs for buy-side U.S. persons. Commenters also expressed concerns that allowing the SBS entities registration compliance date to follow the

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532 A covered cross-border transaction is a security-based swap that has, on one side, a direct counterparty who is not a U.S. person but has a U.S. guarantor, and on the other side has no counterparty that is a U.S. person, registered security-based swap dealer, or registered major security-based swap participant. Such a transaction will not be submitted to clearing at a registered clearing agency having its principal place of business in the United States. See Regulation SBSR Adopting Release, 80 FR at 14653, n. 827.

533 See 80 FR at 14763.

534 See IIB Letter at 17; ISDA I at 4, 11-13; ISDA II at 1-14; ISDA III at 1-12; SIFMA-AMG II at 6-7; UBS Letter at 2; WMBAA Letter at 5-6.

implementation of Regulation SBSR would complicate reporting in the interim period between the two dates. Many of these commenters also expressed concerns that the reporting of historical security-based swaps would be significantly more difficult if compliance for reporting were required before the SBS entities registration compliance date.[535]

Some commenters expressed concerns about basing the compliance schedule for an asset class on the registration of the first SDR that can accept security-based swaps in that asset class, which, they argued, could confer an unfair "first mover" advantage.[536] One of these commenters recommended that the Commission consider a compliance schedule that would base the first compliance date on the registration of a "critical mass" of SDRs.[537]

Other commenters expressed concern about how the reporting requirements contained in Regulation SBSR could be implemented before the Commission finalizes its rules regarding SB SEFs.[538] Some commenters urged the Commission to defer compliance with Regulation SBSR until the Commission makes one or more substituted compliance determinations with respect to regulatory reporting and public dissemination of security-based swap transactions in foreign jurisdictions.[539] Still others suggested that the Commission defer compliance with the requirement to report certain UICs until international standards for UICs are developed.[540] Several commenters expressed concerns that differences between Regulation SBSR and the

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535 See ISDA/SIFMA Letter at 16-17; ISDA II at 10; ISDA III at 2, 4.

536 See WMBAA Letter at 6; DTCC Letter at 12; SIFMA Letter at 17; DTCC/ICE/CME Letter at 4-5; ISDA/SIFMA Letter at 18.

537 WMBAA Letter at 5.

538 See WMBAA Letter at 5-6; ISDA/SIFMA Letter at 3.

539 See ISDA/SIFMA Letter at 19-20; SIFMA/FSR Letter at 15; IIB Letter at 19.

540 See ISDA/SIFMA Letter at 3, 12; DTCC/ICE/CME Letter at 3-4; Financial InterGroup Letter at 4; DTCC Letter at 2-3.

parallel CFTC rules would present significant implementation challenges for SDRs and market participants that seek to operate in both the swap and security-based swap markets.[541] Various commenters generally urged the Commission to provide adequate time for the development and implementation of the required compliance systems and procedures.[542]

These comments and the Commission's responses thereto are discussed in more detail below. The Commission is adopting the primary features of the proposed compliance schedule but is making several revisions in response to comments. Most notably, as described below, the Commission had decided to align the compliance dates for Regulation SBSR with the SBS entities registration compliance date.

C. Compliance Date 1

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

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541 See DTCC Letter at 21 ("SB SDR applicants would be forced to expand their operations considerably, particularly to address the confirmation functions and code issuance responsibilities"); ICE Letter at 8; ISDA/SIFMA Letter at 8 ("reporting sides and market infrastructure providers will need to engage in significant builds and development of new industry standards in order to comply"); WMBAA Letter at 5.

542 See Financial InterGroup Letter at 1; WMBAA Letter at 5-6; ISDA/SIFMA Letter at 8-18.

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

Furthermore, Rule 901—which imposes reporting duties on specified persons beginning on Compliance Date 1—must be read in connection with Rules 908(a) and 908(b) on Compliance Date 1. Thus, for example, a non-U.S. person who falls within one of the categories set forth in Rule 908(b) could, under Rule 901(a), be required on Compliance Date 1 to report a cross-border security-based swap if the security-based swap falls within one of the categories set forth in Rule 908(a). Also, when persons with reporting duties begin mandatory reporting on Compliance Date 1, they must do so in a manner consistent with Rule 903, which addresses the use of coded information in the reporting of security-based swaps.

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

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

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

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

Several commenters strongly urged the Commission to defer Compliance Date 1 until security-based swap dealers must register with the Commission.[545] These commenters correctly observed that, during any interim period beginning on the date that the Commission requires reporting of newly executed security-based swaps in a particular asset class but before the SBS entities registration compliance date (the "Interim Period"), there would be no registered security-based swap dealers or registered major security-based swap participants to occupy the highest rungs of the reporting hierarchy in Rule 901(a)(2)(ii). Therefore, during any such Interim Period, any security-based swap covered by the reporting hierarchy would either be a "tie"—because both sides are unregistered persons who fall within Rule 908(b)—or one side would become the reporting side because only that side includes a person that falls within Rule 908(b).[546] The commenters argued generally that the absence of registered security-based swap dealers at the top of the reporting hierarchy during the Interim Period would create a number of difficulties in negotiating and carrying out reporting duties.[547] Commenters pointed out particular difficulties with ascertaining reporting duties for cross-border transactions under Rule 901(a)(2)(ii) during the Interim Period[548] and emphasized that buy-side U.S. persons that transact

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545 One commenter submitted several comments regarding this issue. See ISDA I at 4, 11-13; ISDA II at 1-14; ISDA III at 1-2, 9-12; ISDA/SIFMA Letter at 6-9. Other commenters raised similar issues. See IIB Letter at 17; SIFMA-AMG II at 6-7; SIFMA/FSR Letter at 15.

546 If one side of a security-based swap includes no person that falls within Rule 908(b), that side does not incur any reporting duties under Regulation SBSR.

547 See, e.g., ISDA I at 11-13; ISDA II at 1-12; ISDA III at 1-2; ISDA/SIFMA at 6-7.

548 See ISDA II at 1-10; ISDA III at 2-11; SIFMA/FSR Letter at 13-14; SIFMA-AMG II at 6-7. One commenter expressed the general view that costs to buy-side U.S. persons of negotiating with counterparties regarding reporting responsibilities, constructing

with foreign dealing entities during the Interim Period would find it particularly difficult to make assessments of whether their non-U.S. counterparties were engaged in ANE activity. Furthermore, according to the commenters, attempts to address difficulties arising during the Interim Period would be costly, complicated, and inefficient,[549] and such interim solutions would not be useful for the period after the SBS entities registration compliance date.[550]

The Commission acknowledges the commenters' concerns that requiring compliance with Regulation SBSR before the SBS entities registration compliance date would have raised numerous challenges, and that addressing these challenges would have necessitated time and investment to create interim solutions that might not be useful after the SBS entities registration compliance date. Therefore, the Commission has determined that market participants will not be required to comply with Regulation SBSR until after the SBS entities registration compliance date. As noted above, the second prong of Compliance Date 1 is one month after the SBS

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reporting mechanisms, or engaging third parties to aid in their reporting are substantial and outweigh the benefits of beginning reporting prior to the SBS entities registration compliance date. See ISDA II at 4.

549 One commenter, for example, presented a complex set of possible options for facilitating industry compliance with Regulation SBSR during the Interim Period. See ISDA III, passim. These suggestions included the Commission adopting an "interim reporting side hierarchy" as well as "a publicly available industry declaration for entities willing to assume the role of a SBS dealing entity in such hierarchy," regardless of whether or not they were engaging in ANE activity in a particular transaction. See id. at 9-10. The commenter also provided a detailed discussion of potential costs associated with these suggested interim solutions. See id. at 6-9.

550 See, e.g., ISDA II at 7; UBS Letter at 2; ISDA/SIFMA Letter at 9 (arguing that requiring compliance with the reporting duties before the SBS entities registration compliance date "creates unjustified additional costs to implement interim solutions" and that "[t]he cost and effort of such implementation will be wasted once dealer registration is required"). This commenter presented several potential alternatives for addressing concerns about implementing Regulation SBSR before the SBS entities registration compliance date, while stressing that its first choice was for the Commission to delay Compliance Date 1 until after the SBS entities registration compliance date. See ISDA III at 3-5, 9-10.

entities registration compliance date. This one-month period is designed to allow all security-based swap market participants to become familiar with which firms have registered as security-based swap dealers, and for registered security-based swap dealers to ensure that they have the systems, policies, and procedures in place to commence their primary reporting duties under Regulation SBSR. Without providing an additional period between the SBS entities registration compliance date and Compliance Date 1, unnecessary confusion could result if market participants were forced to readjust their reporting hierarchies within a very short period, particularly if several firms were to register only days before or actually on the SBS entities registration compliance date.

One commenter who urged that the Commission defer compliance with Regulation SBSR until after security-based swap dealers register also recommended that, "[i]f the Commission decides to require regulatory reporting of ANE transactions despite [comments] to the contrary, reporting should be required only with respect to those ANE transactions that are relevant for SBSD registration (i.e., executed from the later of (a) February 21, 2017 or (ii) two months before the SBS registration compliance date)."[551] In light of the Commission's final Compliance Date 1 schedule, this comment is now moot because dealing entities will not be required to report any security-based swap transactions before the SBS entities registration compliance date.

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

Final Compliance Date 1 retains a prong that generally follows the principle in proposed Compliance Date 1 of allowing six months between the registration of the first SDR that can accept transaction reports of security-based swaps in an asset class. The Commission continues

551 UBS Letter at 3.

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

One commenter expressed the view that the proposed compliance timeline would give reporting sides and SDRs adequate time to implement Regulation SBSR.[552] A second commenter, however, argued that Compliance Date 1 should be extended to 12 months after the registration of the first SDR in an asset class.[553] A third commenter recommended that Compliance Date 1 be nine months after the later of (1) the date by which security-based swap dealers and major security-based swap participants are required to register with the Commission; and (2) the date on which the Commission announces SDR readiness in an asset class.[554]

The Commission believes that six months is an appropriate minimum period between registration of the first SDR in an asset class and Compliance Date 1 with respect to that asset class, particularly in view of the Commission's decision not to require compliance with Regulation SBSR until after the SBS entities registration compliance date. The Commission further notes that, before the Commission grants registration to any SDR, the application would

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552 See ICE Letter at 7.

553 See LCH.Clearnet Letter at 4, 12-13. The commenter believed that the proposed timeframe would not provide enough time to connect to all registered SDRs. See id. at 4.

554 See ISDA/SIFMA Letter at 17; UBS Letter at 2.

be published for comment.[555] The minimum six-month period between the Commission's grant of an SDR's registration and Compliance Date 1 should allow prospective participants sufficient time to analyze the final form of the SDR's policies and procedures under Regulation SBSR, make inquiries to the SDR about technological and procedural matters for connecting to the SDR to report the necessary data, build or adapt existing connections as necessary, and conduct systems testing.[556] The Commission staff intends to monitor participant readiness during the period between the granting of the first SDR registration and Compliance Date 1.

Certain commenters suggested establishing dates certain for compliance with Regulation SBSR.[557] While the Commission appreciates commenters' desire to have certainty about when their duties under Regulation SBSR will commence, the Commission notes that there are not yet any registered SDRs and the Commission cannot predict when one or more SDRs will be granted registration. Furthermore, the SBS entities registration compliance date is contingent on the completion of several other rulemakings. The Commission believes, therefore, that the more practical approach is to base Compliance Date 1 on the later of these two events, rather than to establish dates certain.

Finally, two commenters noted that, although proposed Compliance Date 1 would have been tied to the commencement of operations of a registered SDR in an asset class, "commencement of operations" is not defined and it was not clear to the commenters how this

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555 See SDR Adopting Release, 80 FR at 14465.

556 See WMBAA Letter at 6 ("Platforms' compliance with the Proposed Rules will depend on the permissibility of functionality of services provided by third-party vendors and SDRs. These vital infrastructure components will determine how quickly platforms and market participants can comply with the Proposed Rules").

557 See DTCC Letter at 3; DTCC/ICE/CME Letter at 4.

date would be determined or how market participants would be made aware of that date.[558] The Commission has determined to eliminate the "commencement of operations" as one of the triggering events in Compliance Date 1. The Commission acknowledges that this change from "commencement of operations" to the date of SDR registration in this prong could reduce the number of days between the issuance of this release and Compliance Date 1, if there is in fact a lag between registration and the "commencement of operations" for that registered SDR. However, the Commission believes that market participants will benefit from eliminating uncertainty about precisely when an SDR "commences operations" and how the fact of such commencement would be conveyed.

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

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

The Commission is adopting the proposed approach that the compliance dates are specific to a security-based swap asset class. One commenter expressed concern that the potential for varying compliance dates for different asset classes "would inject unnecessary complexity into the implementation process and potentially cause confusion among market participants."[559] The Commission notes, however, that there is no requirement that a person that seeks registration as an SDR must accept security-based swaps in both the credit and equity asset classes. Thus, a person might submit an application to register as an SDR only with respect to a

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558 See DTCC Letter at 12; ISDA/SIFMA Letter at 17.

559 DTCC Letter at 12, n. 25.

single asset class.[560] If the Commission were to grant registration of an SDR applicant that could receive transactions in only a single asset class and assuming that the other prong of Compliance Date 1 were met, it would be impossible for market participants to report transactions in other asset classes to that SDR. Delaying Compliance Date 1 until an SDR has been registered in all security-based swap asset classes would prevent reporting from beginning in the asset class or classes that the first registered SDR is ready to accept. Therefore, the Commission believes that it is appropriate to make the compliance dates specific to each asset class.

4. "First-Mover" Concerns

Several commenters expressed concerns about triggering compliance based on the first SDR in an asset class to register with the Commission.[561] One commenter recommended that, to minimize these concerns, the Commission should "coordinate its processing of SDR applications received within a reasonable window and time its announcement of SDR registration and readiness to include all SDRs for an asset class that will be approved ahead of Compliance Date 1."[562] Likewise, a second commenter urged the Commission "to uniformly review and

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560 See Securities Exchange Act Release No. 77699, Notice of Filing of Application for Registration as a Security-Based Swap Data Repository by ICE Trade Vault, LLC (April 22, 2016) (SBSDR-2016-01) (requesting registration with the Commission as an SDR only for the credit asset class).

561 See DTCC Letter at 12 (noting that market participants will likely be compelled to begin the onboarding process with the first registered SDR); DTCC/ICE/CME Letter at 4 (noting that market participants would have no choice but to join the first registered SDR to guarantee that they meet any compliance date tied to the first SDR); ICE Letter at 8; ISDA/SIFMA Letter at 18 (stating that a reporting side may not be able to freely select the SDR of its choice if another SDR is first to register and the desired SDR cannot complete the registration process before participants would be compelled to report to the first SDR).

562 ISDA/SIFMA Letter at 18.

approve SDR applicants that are acting in good faith to complete the application process in order to minimize 'first mover' advantages."[563]

With respect to commenters' concerns about multiple SDR applications for registration, the Commission previously stated in the SDR Adopting Release that it "intends to process such applications . . . within the same period of time so as to address competition concerns that could arise if such SDRs were granted registration at different times."[564] However, if an SDR application meets the criteria of Rule 13n-1(c)(3) under the Exchange Act,[565] the Commission does not believe that it should be necessary to delay granting the registration because of the status of other pending applications. As the Commission also noted in the SDR Adopting Release: "Certain unexpected events that raise compliance concerns with respect to one applicant but not another, such as deficiencies identified in connection with the Commission's consideration of whether an applicant meets the criteria of Rule 13n-1(c), may interfere with the Commission's ability to process initial applications for registration within the same period of time."[566]

The Commission acknowledges that, by requiring compliance based on the first SDR in an asset class to register with the Commission, a participant might not be able to report security-based swaps to its preferred SDR. However, this situation implies that the participant's preferred SDR for reporting security-based swap transactions has not yet met the criteria for registration

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563 ICE Letter at 8. This commenter also urged the Commission to "focus equally on each application," "provide applicants equal opportunities to address the Commission's comments and amend their applications," and "make best efforts to approve SDR applicants at the same time." Id.

564 80 FR at 14467.

565 17 CFR 240.13n-1(c)(3) (enumerating the criteria that the Commission must assess in granting the registration of an SDR).

566 80 FR at 14467, n. 340.

under Rule 13n-1(c)(3). The Commission believes that commencing reporting with only a single registered SDR in an asset class, should this prove necessary, would be preferable to any alternative. When the Commission grants the first SDR registration, delaying compliance with Regulation SBSR until additional registrations are granted would not further the objectives of Title VII.[567] The opposite approach, whereby the Commission would not require compliance with Regulation SBSR until two or more SDRs had registered with the Commission, could have the effect of giving an applicant that has not met the criteria for registration the power to delay the reporting regime contemplated by Title VII. The Commission believes that this outcome would unfairly retard the ability of a successful applicant to begin providing SDR services.

Finally, the Commission notes that, even if there is only one registered SDR for some period of time, other Commission rules are designed to minimize any undue advantage that the first SDR might otherwise enjoy. For example, every SDR, even the first and only registered SDR in a particular asset class, must offer fair, open, and not unreasonably discriminatory access to users of its services.[568] Furthermore, any fees that it charges would have to be fair and reasonable and not unreasonably discriminatory.[569]

5. No Delay for Substituted Compliance Determinations

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567 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").

568 See Rule 13n-4(c)(1)(iii) under the Exchange Act, 17 CFR 240.13n-4(c)(1)(iii).

569 See Rule 13n-4(c)(1)(i) under the Exchange Act, 17 CFR 240.13n-4(c)(1)(i).

Three commenters urged the Commission to defer compliance with Regulation SBSR until the Commission has made substituted compliance determinations with respect to regulatory reporting and public dissemination of security-based swap transactions for certain foreign jurisdictions.[570] In the view of one of these commenters, this approach could "save reporting sides the effort and cost of building to the SBSR requirements if their current builds will suffice."[571] Another commenter stated that "[r]equiring the changes to systems, personnel and trade flows necessary to comply with the Commission's Proposal only to later be granted substituted compliance would impose significant and unnecessary burdens for negligible short-term benefits."[572]

The Commission declines to accept this suggestion and does not believe that compliance with Title VII's regulatory reporting and public dissemination requirements, as implemented by Regulation SBSR, should be delayed until the Commission has made any substituted compliance determinations. The Commission has not yet received any substituted compliance applications and, therefore, does not yet have sufficient information regarding any foreign jurisdiction to make the findings necessary to issue a substituted compliance order. In addition, because many other jurisdictions are, like the Commission, still in the process of establishing and implementing their regulatory requirements, the Commission cannot predict when—or even if—any jurisdictions ultimately will have regulatory systems that are comparable to Regulation SBSR. If the Commission were to accept the commenters' suggestion, the Commission might have to

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

571 ISDA/SIFMA Letter at 20.

572 SIFMA/FSR Letter at 15.

defer compliance for a lengthy period, which would unnecessarily delay the implementation of the reporting and public dissemination regime.

6. No Delay for Adoption of SB SEF Rules

Two commenters urged the Commission to delay Compliance Date 1 until the Commission adopts final rules relating to SB SEFs and provides sufficient time for entities to register with the Commission as SB SEFs.[573] One of these commenters argued, for example, that "the Commission should prepare alternative compliance regimes in the chance that all of the SB swap trading rules are not in place (and, as a result, market participants cannot meet the reporting obligations of Rule 901) by Compliance Date 1."[574]

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

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573 See WMBAA Letter at 5-6; ISDA/SIFMA Letter at 3.

574 WMBAA Letter at 6.

The Commission understands that there are a small number of existing entities that likely meet the definition of "security-based swap execution facility" at present but are not yet registered with the Commission as such. However, Rule 901(a)(1) applies to all platforms, including unregistered SB SEF. Moreover, the Commission does not believe that the finalization of its SB SEF rules would affect their capability to report such transactions to a registered SDR because the Commission understands that such entities are likely to be swap execution facilities that already have incurred swap reporting duties under CFTC rules.[575] Thus, these entities already have substantial reporting infrastructure that can likely be used to support security-based swap reporting duties.[576] For transactions that occur on exempt SB SEFs, the Commission considered an alternative of requiring a side to report each transaction effected on the SB SEF that will be submitted to clearing until SB SEFs have an opportunity to register with the Commission. However, this alternative is unworkable because platform transactions that will be submitted to clearing may be anonymous, and the sides cannot be expected to ascertain the reporting side or report the necessary counterparty information if they are anonymous to each other.[577]

7. Compliance With UIC Requirements

Several commenters urged the Commission to defer compliance with Regulation SBSR's UIC requirements until international standards for these UICs are developed and can be used

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575 See Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (January 13, 2012) (discussing reporting under the CFTC rules and swap execution facilities roles in that reporting); see also "The Role of Swap Execution Facilities (SEFs) in Derivatives Trade Execution, Clearing and Reporting: Part 2" at https://riskfocus.com/the-role-of-swap-execution-facilities-sefs-in-derivatives-trade-execution-clearing-and-reporting-part-2/ (last visited on May 25, 2016) for a summary of such reporting.

576 See supra Section IV(H).

577 See supra Section IV(B).

across multiple SDRs and multiple jurisdictions.[578] Two of these commenters expressed concern that requiring each registered SDR to establish its own UIC system ahead of an internationally recognized standard would generate significant complexities and costs and would frustrate data aggregation efforts.[579] One commenter argued that the Commission generally should "consider a separate compliance schedule for UIC fields to allow sufficient time for SB SDRs to work collaboratively with market participants, including prospective UIC issuers, to develop an industry standard or, at minimum, an SB SDR-specific methodology."[580]

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

a. UICs for Legal Entities

For any UIC that can be represented with a Legal Entity Identifier ("LEI"), compliance is required on Compliance Date 1. In the Regulation SBSR Adopting Release, the Commission recognized the Global Legal Entity Identifier System ("GLEIS") as an internationally recognized standards-setting system ("IRSS") that satisfies the requirements of Rule 903.[581] Under Rule 903(a), if an IRSS recognized by the Commission has assigned a UIC to a person, unit of a person, or product, each registered SDR must employ that UIC for reporting purposes under Regulation SBSR, and SDR participants must obtain such UICs for use under Regulation SBSR.

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578 See DTCC Letter at 2-3; ISDA/SIFMA Letter at 3, 12; DTCC/ICE/CME Letter at 3-4; Financial InterGroup Letter at 4.

579 DTCC Letter at 10; DTCC/ICE/CME Letter at 3.

580 DTCC Letter at 11. See also DTCC/ICE/CME Letter at 3 (stating that the Commission should allow "sufficient time for the IDs to be developed in collaboration with the industry").

581 See 80 FR at 14631-32.

Counterparties, ultimate parents, brokers, execution agents, platforms, registered clearing agencies, and registered broker-dealers typically are legal entities and typically already have or will be able to obtain an LEI. Accordingly, compliance with the LEI requirements under Regulation SBSR is required on Compliance Date 1.

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

Regulation SBSR also requires UICs for three types of "sub-legal entities": branches, trading desks, and individual traders. As commenters note, neither the GLEIS nor any other potential IRSS assigns identifiers to any sub-legal entities at this time.[582] Although the GLEIS has begun exploring the possibility of assigning identifiers to branches and certain natural persons,[583] it is unclear when any final decision to do so might be taken. Given the uncertainty about when or even if an IRSS will eventually be able to issue identifiers for all branches, trading desks, and traders, the Commission does not believe that it would be appropriate to delay compliance with these UIC requirements until an IRSS can provide them.

The Commission recognizes that this approach raises the possibility that different SDRs could, in theory, assign different UICs to the same person, unit of a person, or product. If this were to occur, the Commission could have to map the UICs assigned by one registered SDR to the corresponding UICs assigned by one or more other SDRs to maintain a complete picture of the market activity pertaining to a particular person or sub-legal entity. The Commission

582 See DTCC Letter at 9-10; Financial InterGroup Letter at 3-4.

583 See, e.g., LEI Regulatory Oversight Committee, "Consultation document on including data on branches in the Global LEI System," available at http://www.leiroc.org/publications/gls/lou_20151019-1.pdf (last visited on May 25, 2016); and "Statement on Individuals Acting in a Business Capacity," available at http://www.leiroc.org/publications/gls/lou_20150930-1.pdf (last visited on May 25, 2016).

specifically addressed this issue in the Regulation SBSR Adopting Release.[584] However, the Commission previously noted a mechanism whereby a participant could use the same UICs at multiple SDRs.[585] Regulation SBSR does not prohibit a participant from making suggestions to a registered SDR regarding the UICs that the SDR is required to assign, particularly for sub-legal entities.[586] Through this mechanism for assignment, a person who is a participant of two or more registered SDRs could—with the concurrence of these SDRs—utilize the same UICs across multiple SDRs.[587]

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584 See 80 FR at 14632 ("UICs, even if SDR-specific, will provide a streamlined way of reporting, disseminating, and interpreting security-based swap information. The Commission believes that requiring registered SDRs to develop their own UICs—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 or by the Commission").

585 See Regulation SBSR Adopting Release, 80 FR at 14723, n. 1371 ("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").

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

587 In connection with its comments regarding how Regulation SBSR's compliance dates should address UIC issues, one commenter recommended that the Commission "consult and agree with market participants" on how to assign various UICs, including branch ID, trading desk ID, trader ID, and product IDs. See DTCC Letter at 10-11. The commenter then recommended compliance dates of different lengths after a standard for each type of UIC had been agreed upon. See id. The Commission already has established a mechanism for how these UICs must be assigned: Rule 903(a), as adopted in the Regulation SBSR Adopting Release, provides that, in the absence of a Commission-recognized IRSS that can supply the UIC, a registered SDR must assign the UIC using its own methodology. Furthermore, in light of the guidance above regarding how a registered SDR may confer with a participant to assign a mutually agreeable set of UICs—and how, through this process, the same UICs could be used for a particular participant across multiple SDRs—the Commission does not believe that it is necessary

c. Transaction ID

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

One commenter expressed the belief that SDRs will be able to assign transaction IDs to pre-enactment and transitional security-based swaps by the date that the Commission had proposed in the Regulation SBSR Proposed Amendments Release.[589] Since the proposed compliance schedule would have required historical security-based swaps to be reported by or before proposed Compliance Date 1, the comment implies that registered SDRs also should be able to assign transaction IDs to newly executed transactions beginning on Compliance Date 1.

A second commenter urged the Commission to "recognize the 'first touch principle' as an acceptable standard for SB SDRs to meet their 901(g) obligations."[590] The commenter explained that, under the existing CFTC swap data reporting rules, an SDR is not required to issue a transaction ID and can rely on the reporting side to submit its internal transaction ID.[591] As

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or appropriate to establish different compliance dates for each type of UIC in the manner recommended by the commenter.

588 Also beginning on Compliance Date 1, each registered SDR must comply with the companion requirement in Rule 901(f) that a registered SDR time-stamp all incoming transaction reports.

589 See ICE Letter at 8.

590 DTCC Letter at 20.

591 See id. The Commission notes, however, that, under CFTC Rule § 45.5(c), 17 CFR 45.5(c), a swap data repository must create and transmit a unique swap identifier for an

provided in existing Rule 901(g), a registered SDR may endorse a methodology for third parties to assign a transaction ID to an individual security-based swap. If an SDR wishes to allow third parties (such as platforms or counterparties) to assign transaction IDs, the SDR must explain in its policies and procedures under Rule 907(a)(5)[592] any form or content requirements imposed by the SDR that the third party would be required to follow.

d. Product ID

One commenter argued that, before requiring compliance with the product ID requirement, the Commission should "consult and agree with market participants on a standard to be applied. An agreed upon public standard would provide greater certainty to reporting sides and SB SDRs to build to one uniform standard as opposed to bespoke models for each SDR."[593] After careful consideration of this comment, the Commission has determined not to delay compliance with the product ID requirement. At the present time, it is unclear if or when market participants could agree upon and implement standards for a product ID. Therefore, in the absence of an IRSS that can assign product IDs, registered SDRs must by Compliance Date 1 begin assigning product IDs, and persons with a duty to report transactions must use these SDR-assigned product IDs in their mandatory reports. To enable their participants to report transactions using the appropriate product IDs on Compliance Date 1, registered SDRs must set out in their written policies and procedures how they will assign product IDs (and all other UICs other than those available through an IRSS recognized by the Commission) in a manner

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off-facility swap if the reporting counterparty for that swap is a non-swap dealer/major swap participant.

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

593 DTCC Letter at 10.

consistent with Rule 903. A registered SDR should consider publishing as far in advance of Compliance Date 1 as possible the product IDs of the products most likely to be traded on or shortly after Compliance Date 1. The Commission recognizes, however, that it is not practical for a registered SDR to publish a list of all possible products with their product IDs, as many products have not yet been created (or certain types of contracts have not yet become sufficiently standardized as to become products, as that term is defined in Rule 900(aa), and thus require a product ID). Therefore, as a practical matter, the Commission does not believe that a registered SDR could comply with Rule 907(a) unless its policies and procedures include a mechanism or process for the registered SDR to assign a product ID to a new product before or simultaneously with the initial transaction in that product, and to make available the product ID so that reports of transactions in that new product can include the correct product ID.

8. Switching of Reporting Side Designation

One commenter's analysis of the problems that could result from a Commission determination to require reporting compliance ahead of the SBS entities registration compliance date was premised on the assumption that a U.S. non-dealing entity that was the reporting side for a security-based swap executed during the Interim Period would remain the reporting side for the life of the security-based swap.[594] The commenter argued that Regulation SBSR should not permit the reporting side designation to "switch" from one side to the other over life of a security-based swap contract.[595] The Commission disagrees with this comment.

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594 See ISDA I at 13; ISDA II at 7.

595 See ISDA I at 8 ("Switching the reporting side during the term of a trade is in every respect an enormous challenge . . . [and] will likely have a significant impact on the completeness, integrity and correctness of reported SBS data").

Rule 901(a)(2)(ii) sets forth a reporting hierarchy that has two possible outcomes for any transaction pair: (1) one side occupies a higher rung in the hierarchy than the other side, in which case the side that occupies the higher rung "shall be the reporting side"; or (2) the outcome is a tie, and "the sides shall select the reporting side." Sides in a tie situation, after having made an initial selection of the reporting side, can select a new reporting side later in the life of the contract.[596]

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

D. Compliance Date 2

Compliance Date 2 is the date on which all registered SDRs that can accept security-based swaps in a particular asset class must begin public dissemination, pursuant to Rule 902, of transactions in that asset class. On Compliance Date 2, each such SDR will be required to comply with Rules 902 (regarding public dissemination generally), 904(d) (requiring dissemination of transaction reports held in queue during normal or special closing hours), and 905(b)(2) (with respect to public dissemination of corrected transaction reports) for all security-

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[596] If the sides insisted on selecting a new reporting side but Rule 901(a)(2)(ii) did not permit them to do so, they could accomplish the new selection by tearing up the existing security-based swap and immediately replacing it with a new security-based swap having exactly the same terms, except that they select a different reporting side for the new transaction.

based swaps in that asset class, except as provided by Rule 902(c). As discussed further below, Compliance Date 2 is the first Monday that is three months after Compliance Date 1.

One commenter expressed the view that commencing the requirement for public dissemination nine months after SDR registration would be sufficient, provided that other compliance issues arising earlier in the compliance schedule are resolved.[597] Likewise, a second commenter believed that Compliance Date 2 should be three months after Compliance Date 1, but only after stating its belief that Compliance Date 1 should be 12 months rather than six months after the first registered SDR commences operations.[598] A third commenter believed that three months after Compliance Date 1 was not sufficient time for SDRs to comply with the data dissemination requirements in Regulation SBSR and recommended six months instead.[599] A fourth commenter recommended that Compliance Date 2 be three months after the later of Compliance Date 1 and the date on which the Commission has determined appropriate exceptions, delays, and/or notional caps to preserve the identity, business transactions, and market positions of any person.[600] The fourth commenter asserted that the longer time was necessary for Compliance Date 2 because "concerns regarding the compromise of market anonymity for illiquid and large notional trades have not adequately been addressed during the interim period."[601]

The Commission has revised its proposed approach to Compliance Date 2 as it relates to the handling of covered cross-border transactions. In the Regulation SBSR Proposed

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597 See DTCC Letter at 21.

598 See LCH.Clearnet Letter at 12.

599 See ICE Letter at 8.

600 See ISDA/SIFMA Letter at 17.

601 ISDA/SIFMA Letter at 3.

Amendments Release, the Commission proposed that the public dissemination requirements associated with Compliance Date 2 would not have applied to covered cross-border transactions.[602] However, as discussed in Section IX(E), supra, the Commission in the U.S. Activity Proposal sought additional comment on whether public dissemination of covered cross-border transactions should be made effective[603] and, in this release, the Commission has determined that all transactions described in Rule 908(a)(1), including covered cross-border transactions, shall be subject to public dissemination, except as otherwise provided by Rule 902(c). Therefore, compliance with the public dissemination requirements shall commence on Compliance Date 2 for covered cross-border transactions along with other security-based swaps, and there is no longer any reason to consider an effective or compliance date for covered cross-border transactions separate from all other transactions that are subject to public dissemination.

The Commission proposed and is now adopting a three-month period between Compliance Date 1 and Compliance Date 2. This three-month period is designed to give registered SDRs and persons having a duty to report an opportunity to identify and resolve any issues related to trade-by-trade reporting by participants and further test their data dissemination systems. The Commission staff intends to monitor the implementation of Regulation SBSR between Compliance Dates 1 and 2.

Also, similar to the approach taken for Compliance Date 1, the Commission believes that it will be helpful to the industry to begin public dissemination on a Monday, which ensures that

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602 See supra note 460 (explaining that term). One commenter supported excluding covered cross-border transactions from public dissemination on Compliance Date 2, as well as the Commission's decision to seek public comment before determining if and when to include them in the scope of transactions subject to public dissemination. See ISDA/SIFMA Letter at 18. The Commission addressed this comment in Section IX(E), supra.

603 See 80 FR at 27485.

registered SDRs have at least the immediately preceding weekend to conduct any final systems changes or testing before public dissemination begins. Therefore, Compliance Date 2 is the first Monday that is three months after Compliance Date 1.

Finally, Compliance Date 2 is the date by which participants of registered SDRs that are subject to Rule 906(b) must comply with that rule.[604] This represents a change from the proposed compliance schedule, under which covered participants would have been required to comply with Rule 906(b) on Compliance Date 1.[605] A person does not become subject to Rule 906(b) until it becomes a participant of a registered SDR. A counterparty to a security-based swap becomes a participant of a registered SDR only when a security-based swap to which it is a counterparty is reported to that SDR on a mandatory basis.[606] Thus, a security-based swap counterparty cannot become a participant until Compliance Date 1 at the earliest, because transactions will not be reported to a registered SDR on a mandatory basis until Compliance Date 1. A large number of security-based swap counterparties will become participants on Compliance Date 1 or the first days and weeks following Compliance Date 1. This could, in the

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604 Rule 906(b) requires each participant of a registered SDR to provide to the SDR information sufficient to identify the participant's ultimate parent(s) and any affiliate(s) of the participant that also are participants of that registered SDR. Rule 906(b) further provides that a participant must "promptly" notify the registered SDR of any changes to that information. Rule 907(a)(6) requires each 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 participant(s) with which the participant is affiliated.

605 See Regulation SBSR Proposed Amendments Release, 80 FR at 14765.

606 See Rule 900(u).

Commission's view, cause unnecessary difficulties for registered SDRs and their new participants if participants were required to comply with Rule 906(b) on Compliance Date 1.[607]

In light of this concern, the Commission now believes that it is appropriate to delay compliance with Rule 906(b) for an additional three months to avoid triggering a large number of new filings and amendments that likely would have been required if the Commission had required compliance with Rule 906(b) on Compliance Date 1. Accordingly, the Commission is not requiring compliance with Rule 906(b) until Compliance Date 2. This will allow for a number of security-based swaps to be reported over the three-month period between Compliance Dates 1 and 2 that will create a critical mass of participants, thereby permitting the filing of initial reports under Rule 906(b) that are less likely to require repeated updating because of the addition of new participants that are affiliated with existing participants.[608]

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607 For example, assume that S, T, and U are affiliated and all have a single ultimate parent (P) and the Commission had required compliance with Rule 906(b) on Compliance Date 1. At 09:30:02 UTC on Compliance Date 1, a security-based swap involving S as a counterparty is reported to SDR A on a mandatory basis. This is the first time that S is a counterparty to a transaction reported to SDR A on a mandatory basis, and no affiliates of S are counterparties to security-based swaps that have been reported to SDR A. Upon becoming a participant of SDR A, S must report to SDR A that it has an ultimate parent (P) and no affiliates that are also participants. At 10:30:57 UTC, a security-based swap involving T as a counterparty is reported to SDR A on a mandatory basis. T also becomes a participant of SDR A and must report to SDR A that it has an ultimate parent (P) and one affiliate (S) that also is a participant of SDR A. Because Rule 906(b) also requires S to promptly notify SDR A of any changes to its ultimate parent and affiliate information, S must amend its submission to SDR A to reflect that its affiliate T has just become a participant. At 11:30:33 UTC, a security-based swap involving U as a counterparty is reported to SDR A on a mandatory basis. U must report to SDR A that it has an ultimate parent (P) and two affiliates that are participants (S and T). U's becoming a participant also triggers revisions to S and T's reports to reflect that their affiliate U has just become a participant. Thus, the creation of new participants in the first hours and days after Compliance Date 1 could trigger the requirement to file a large number of amended reports under Rule 906(b).

608 The Commission recognizes, however, that several Rule 906(b) reports could have to be amended to reflect the addition of a new participant, even after Compliance Date 2. For

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

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

One commenter expressed the view that requiring reporting of historical security-based swaps in advance of the SBS entities registration compliance date would place the bulk of the reporting burden on U.S. persons, including buy-side U.S. persons, because U.S. persons would be the reporting side for all historical security-based swaps entered into with a foreign dealing

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example, assume that ultimate parent P has 20 subsidiaries, each of which is a participant of SDR A. Rule 906(b) requires a report from each subsidiary showing P as the ultimate parent and each of the other 19 subsidiaries as affiliates. Now assume that a new 21st subsidiary of P is a counterparty to a transaction reported to SDR A on a mandatory basis. This would trigger amendments to the existing 20 reports to reflect the addition of a new affiliate participant. Because these reports would be unnecessarily duplicative, the Commission interprets Rule 906(b) as being satisfied if one member of a financial group provides all of the required ultimate parent and affiliate information on behalf of each group member that is a participant of that registered SDR. While the registered SDR could seek to obtain a separate report from each group member that is a participant, the Commission encourages registered SDRs to consider establishing policies and procedures under Rule 907(a)(6) that would allow for abbreviated reporting for the entire group. Such abbreviated group reporting would still be subject to the requirement that any changes be reported to the registered SDR "promptly." Furthermore, a participant in the group would still be subject to a requirement to separately disclose any ultimate parent or affiliate information that differs from that of other members of the group. In the example above, assume that the 17th subsidiary of P is a 50-50 joint venture with Q. Under the approach suggested here, one member of the P group could file an abbreviated Rule 906(b) report on behalf of all members of the P group (that would identify all 20 subsidiaries, including the 17th). However, the 17th subsidiary would be subject to a separate requirement to notify the registered SDR that, unlike all of the other P group affiliates, it has two ultimate parents (P and Q) and would have to identify any additional participant affiliates that it might have through its Q parent.

entity that did not involve ANE activity.[609] Furthermore, this commenter expressed concern that it could not be reliably determined whether U.S. personnel were used to engage in ANE activity for historical security-based swaps because parties were not required to capture or exchange such information at the time the transactions were executed.[610] The commenter concluded that it would be significantly easier to ascertain the reporting side for historical transactions after the SBS entities registration compliance date, because most would involve a counterparty that will register as a security-based swap dealer.[611] This commenter, in a joint letter with another association, also expressed the view that the volume of non-live historic security-based swaps "will be enormous" and that "reporting over five years of security-based swap transaction data will require tremendous effort and coordination between reporting sides and their SDR."[612] These comments recommended an extended period for reporting non-live historical security-based swaps after the SBS entities registration compliance date, and argued that the commencement of reporting under Regulation SBSR would be more effective if the reporting of non-live historic security-based swaps were done separately and after security-based swap dealer registration.[613]

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

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609 See ISDA II at 10; ISDA III at 2, 4.

610 See ISDA II at 10.

611 See id.

612 ISDA/SIFMA Letter at 16.

613 See id. at 16-17.

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

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

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614 Id. at 7.

615 ISDA II at 11.

616 Id.

available. The two-month gap between Compliance Date 2 and Compliance Date 3 is designed to avoid problems that could arise if registered SDRs and their participants had been required to achieve major compliance milestones on the same day or in close proximity.

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

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

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617 See ISDA II at 10; ISDA/SIFMA Letter at 16-17.

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

A registered SDR that accepts reports of transactions in the relevant asset class may allow persons with a duty to report historical transactions in that asset class on a rolling basis at any time after Compliance Date 1. When it begins accepting reports of historical security-based swaps submitted on a mandatory basis, a registered SDR must comply with Rule 901(f) and time-stamp, to the second, any security-based swap data that it receives pursuant to Rule 901(i). The registered SDR also must comply with Rule 901(g) with respect to transaction IDs for each historical security-based swap that it receives.

As participants begin reporting historical security-based swaps to a registered SDR, participants and registered SDRs also must comply with Rules 901(e) and 905 regarding any historical security-based swaps that are so reported. A report of a life cycle event of a historical transaction that relates to information required by Rule 901(c) would trigger public dissemination of the life cycle event if the report is submitted on or after Compliance Date 2.[618]

The Commission notes that registered SDRs and their participants need not comply with Rule 906(a) with respect to historical security-based swaps. Rule 906(a) requires a registered SDR to identify security-based swaps for which the SDR lacks counterparty ID and (if applicable) broker ID, branch ID, execution agent ID, trading desk ID, and trader ID. Regulation SBSR requires reporting of historical security-based swaps only "to the extent that information

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618 See Regulation SBSR Adopting Release, 80 FR at 14609 ("life cycle events relating to the primary trade information of historical security-based swaps must, after the public dissemination requirement goes into effect, be publicly disseminated"). However, an error correction of a historical security-based swap involving Rule 901(c) information would not trigger public dissemination, even after Compliance Date 2. See id.

about such transactions is available"—including information pertaining to the remaining UICs. Because broker IDs, branch IDs, execution agent IDs, trading desk IDs, and trader IDs will not be assigned by registered SDRs until they become operational, these UICs likely will not have existed or been recorded in connection with any historical security-based swaps. Therefore, because these UICs are not applicable to historical security-based swaps, a registered SDR is not required by Rule 906(a) to query non-reporting sides for those UICs with respect to any historical transactions, and non-reporting sides are not required by Rule 906(a) to provide any UICs with respect to historical transactions.

F. No Separate Compliance Dates for Cross-Border Transactions

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

One commenter, responding to the proposed compliance schedule in the Regulation SBSR Proposed Amendments Release, warned that, if the Commission required regulatory reporting before security-based swap dealer registration, U.S. non-dealing entities would incur the reporting duty when they traded against large foreign dealing entities[619] and that U.S.-to-U.S. transactions would be subject to public dissemination before U.S.-to-non-U.S. transactions.[620] As a result, the commenter argued, "U.S. person end-users may avoid trading with other U.S.

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619 See ISDA/SIFMA at 7.

620 See id. at 7-8.

persons until after dealer registration to avoid their data being publicly disseminated."[621] The commenter concluded that U.S. non-dealing entities' avoidance of other U.S. counterparties would disadvantage U.S. dealing entities and result in less liquidity for U.S. non-dealing entities.[622] The commenter also cautioned that "[w]ith a limited list of counterparties and an even narrower list of dealers to such transactions, public dissemination of this smaller segment of SBS data bears the risk that counterparty identity could be disclosed to the public."[623]

As noted in Section IX, supra, the Commission is adopting amendments to Rules 901(a) and 908 substantially as proposed to cover additional types of cross-border transactions, and Compliance Dates 1, 2, and 3 will apply equally to all counterparties that fall within Rule 908(b) and all security-based swaps that fall within Rule 908(a). Thus, because Regulation SBSR's compliance dates for U.S.-to-U.S. transactions are the same as for U.S.-to-non-U.S. transactions, there is no incentive for U.S. counterparties to trade only with non-U.S. persons to avoid any Regulation SBSR requirements.[624]

G. Exemptions Related to the Compliance Schedule

In June 2011, the Commission exercised its authority under Section 36 of the Exchange Act[625] to exempt any person from having to report any pre-enactment security-based swaps, as

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621 Id. at 7.

622 See id. at 7.

623 Id. at 7-8.

624 The Commission believes that this result is generally consistent with the commenter's statement that "SBS data will be more comprehensive and useful if upon the first day that reporting is required under SBSR, broadly all participants that will be a reporting side will have those obligations and such obligation is evident to all other participants in covered SBS." Id. at 6.

625 15 U.S.C. 78mm.

required by Section 3C(e)(1) of the Exchange Act,[626] until six months after an SDR that is capable of receiving security-based swaps in that asset class is registered by the Commission.[627] In the Regulation SBSR Proposed Amendments Release, the Commission proposed to extend the exemption from the requirement to report pre-enactment security-based swaps to ensure consistency between the proposed compliance schedule and the exemption.[628] Because Compliance Date 1, as proposed in the Regulation SBSR Proposed Amendments Release, would have required the reporting of pre-enactment security-based swaps within six months after the commencement of operations of the first registered SDR in that asset class rather than six months after the date of the registration of the first SDR, the Commission also proposed to extend the exemption from Section 3C(e)(1) exemption to synchronize it with proposed Compliance Date 1.

The Commission received one comment on this aspect of its proposed exemption. The commenter agreed that the exemption for the reporting of pre-enactment security-based swaps should be extended to and terminate on Compliance Date 1.[629]

As discussed above, the Commission is adopting new Compliance Date 3 relating to the reporting of historical security-based swaps, which includes pre-enactment security-based swaps. To harmonize the existing exemption with the compliance date for reporting of pre-enactment security-based swaps, the Commission is exercising its authority under Section 36 of the Exchange Act to exempt any person from having to report any pre-enactment security-based swaps, as required by Section 3C(e)(1) of the Exchange Act, in a particular asset class until Compliance Date 3. The Commission finds that such exemption is necessary or appropriate in

626 15 U.S.C. 78c-3(e)(1).

627 See Effective Date Release, 76 FR at 36291.

628 See 80 FR at 14765-66.

629 See LCH.Clearnet Letter at 13.

the public interest, and is consistent with the protection of investors, because such action prevents the existing exemption from expiring before persons with a duty to report pre-enactment security-based swaps are able and are required to report them to a registered SDR.

In conjunction with the proposed extension of the Section 3C(e)(1) exemption included in the Regulation SBSR Proposed Amendments Release, the Commission also proposed that, with respect to security-based swaps in a particular asset class, the exemption from Section 29(b) of the Exchange Act,[630] in connection with Section 3C(e)(1), would terminate on proposed Compliance Date 1. One commenter agreed with this proposed extension of the Section 29(b) exemption in connection with Section 3C(e)(1).[631] In addition, one commenter asked that the Commission clarify how Section 3C(e)(1) of the Exchange Act relates to the Section 29(b) exemption.[632] The commenter noted that the Commission's Section 29(b) exemption applies to

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630 15 U.S.C. 78cc(b). In the Effective Date Release, the Commission exercised its authority under Section 36 of the Exchange Act to temporarily exempt any security-based swap contract entered into on or after July 16, 2011, from being void or considered voidable by reason of Section 29(b) of the Exchange Act, because any person that is a party to the security-based swap contract violated a provision of the Exchange Act that was amended or added by Subtitle B of Title VII of the Dodd Frank Act and for which the Commission has taken the view that compliance will be triggered by registration of a person or by adoption of final rules by the Commission, or for which the Commission has provided an exception or exemptive relief, until such date as the Commission specifies. See Effective Date Release, 76 FR at 36305. Section 29(b) of the Exchange Act provides, in relevant part: "Every contract made in violation of any provision of this title or of any rule or regulation thereunder, and every contract . . . heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this title or any rule or regulation thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, or regulation, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of much the making or performance of such contract was in violation of any such provision rule or regulation . . ."

631 See LCH.Clearnet Letter at 13.

632 See ISDA/SIFMA Letter at 18.

security-based swap entered into on or after July 16, 2011, and that Section 3C(e)(1) applies only to pre-enactment security-based swaps, i.e., those entered into before July 21, 2010.[633]

The Commission confirms that the existing exemption from Section 29(b) set forth in the Effective Date Release applies only to security-based swaps entered into on or after July 16, 2011.[634] Section 3C(e)(1) applies only to pre-enactment security-based swaps.[635] As a result, an extension of the Section 29(b) exemption in connection with Section 3C(e)(1) would have had no effect. Therefore, there is no need for the Commission to revise or extend the exemption from Section 29(b) in connection with Section 3C(e)(1).[636]

H. Substituted Compliance Requests

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

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633 See id.

634 See Effective Date Release, 76 FR at 36305-306.

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

636 The same commenter also asked for confirmation that the Commission provided the Section 29(b) exemption solely to promote legal certainty and to avoid doubt as to the applicability of Section 29(b) to other Exchange Act provisions and that the Commission has "not taken any view as to whether, when, or under what circumstances Section 29(b) might apply to any provision of Title VII of Dodd-Frank or rule or regulation thereunder, including SBSR." ISDA/SIFMA Letter at 18. Because the Commission is not today providing any relief related to the Section 29(b) exemption, the Commission is not modifying the view set forth in the Effective Date Release. See Effective Date Release, 76 FR at 36305-306.

XI. Paperwork Reduction Act

Certain amendments to Regulation SBSR that the Commission is adopting today contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[637] The Commission published notices requesting comment on the collection of information requirements relating to Regulation SBSR in the Regulation SBSR Proposed Amendments Release[638] and the U.S. Activity Proposal[639] and submitted relevant information to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[640] In addition, the Commission adopted portions of Regulation SBSR that contain collections of information requirements in the Regulation SBSR Adopting Release.[641] The titles of the collections for Regulation SBSR are: (1) Rule 901—Reporting Obligations—For Reporting Sides; (2) Rule 901—Reporting Obligations—For Registered SDRs; (3) Rule 901—Reporting Obligations—For Platforms; (4) Rule 901—Reporting Obligations—For Registered Clearing Agencies; (5) Rule 901—Reporting Obligations—For New Broker-Dealer Respondents; (6) Rule 902—Public Dissemination of Transaction Reports; (7) Rule 903—Coded Information; (8) Rule 904—Operating Hours of Registered Security-Based Swap Data Repositories; (9) Rule 905—Correction of Errors in Security-Based Swap Information—For Reporting Sides; (10) Rule 905—Correction of Errors in Security-Based Swap Information—For Non-Reporting Sides; (11) Rule 905—Correction of Errors in Security-Based Swap Information—For Registered SDRs; (12) Rule 905—Correction of Errors in Security-Based Swap Information—For

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637 44 U.S.C. 3501 et seq.

638 See Regulation SBSR Proposed Amendments Release, 80 FR at 14742-43.

639 See U.S. Activity Proposal, 80 FR at 27503.

640 44 U.S.C. 3507; 5 CFR 1320.11.

641 See Regulation SBSR Adopting Release, 80 FR at 14787.

Platforms; (13) Rule 905—Correction of Errors in Security-Based Swap Information—For Registered Clearing Agencies; (14) Rule 905—Correction of Errors in Security-Based Swap Information—For New Broker-Dealer Respondents; (15) Rule 906(a)—Other Duties of All Participants—For Registered SDRs; (16) Rule 906(a)—Other Duties of All Participants—For Non-Reporting Sides; (17) Rule 906(b)—Other Duties of All Participants—For All Participants; (18) Rule 906(c)—Other Duties of All Participants—For Covered Participants; (19) Rule 906(c)—Other Duties of All Participants—For Platforms; (20) Rule 906(c)—Other Duties of All Participants—For Registered Clearing Agencies; (21) Rule 906(c)—Other Duties of All Participants—For New Broker-Dealer Respondents; (22) Rule 907—Policies and Procedures of Registered Security-Based Swap Data Repositories; and (23) 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 the amendments to Regulation SBSR largely as proposed, with certain revisions. These amendments impact Rules 900, 901, 902, 905, 906, 907, and 908 of Regulation SBSR.

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[642] pertaining to security-based swap transactions) contained in

642 Reportable events include initial security-based swap transactions, life cycle events, and corrections of errors in previously reported information.

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

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

A. Definitions—Rule 900

Rule 900 sets forth definitions of various terms used in Regulation SBSR. In this release, the Commission is adopting certain amendments to Rule 900, including amendments to the definition of "participant" in existing Rule 900(u)[643] and a new defined term "widely accessible" in Rule 900(tt).[644] These changes, in themselves, will not result in any new "collection of

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643 Rule 900(u) has been amended such that the definition of "participant" now includes platforms, registered clearing agencies that are required to report alpha dispositions pursuant to new Rule 901(e)(1)(ii), and registered broker-dealers that incur the duty to report security-based swap transactions to a registered SDR pursuant to new Rule 901(a)(2)(ii)(E)(4). See supra Section V(A).

644 The adopted definition of "widely accessible" has the effect of prohibiting a registered SDR from charging fees for or imposing usage restrictions on the security-based swap

information" requirements within the meaning of the PRA. Changes in definitions that might impact a collection of information requirement are considered with the respective rule that imposes the requirement.[645]

B. Reporting Obligations—Rule 901

1. Existing Rule 901

Existing Rule 901 specifies, with respect to initial security-based swap transactions and life cycle events (and adjustments due to life cycle events), who is required to report, what data must be reported, when it must be reported, where it must be reported, and how it must be reported. Existing Rule 901(a) sets forth a "reporting hierarchy" that specifies the side that has the duty to report a security-based swap. Existing Rule 901(b) states that if there is no registered SDR that will accept the report required by Rule 901(a), the person required to make the report must report the transaction to the Commission. Existing Rule 901(c) sets forth the primary trade information and Rule 901(d) sets forth the secondary trade information that must be reported. Existing Rule 901(e) requires the reporting of life cycle events and adjustments due to life cycle events. Existing Rule 901(f) requires a registered SDR to timestamp, to the second, any information submitted to it pursuant to Rule 901, and existing Rule 901(g) requires a registered SDR to assign a transaction ID to each security-based swap, or establish or endorse a methodology for transaction IDs to be assigned by third parties. Existing Rule 901(h) requires

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transaction data that it is required to publicly disseminate under Regulation SBSR. See supra Section VIII(A).

645 For example, as a result of the expanded definition of "participant," additional entities now are subject to the requirement in Rule 906(c) to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any obligations to report information to a registered SDR in a manner consistent with Regulation SBSR. See infra Section XI(D)(2)(c). The new defined term "widely accessible," however, will not create a new collection of information requirement or affect an existing collection of information requirement.

reporting sides to electronically transmit the information required by Rule 901 in a format required by the registered SDR. Existing Rule 901(i) requires reporting of pre-enactment security-based swaps and transitional security-based swaps to the extent that information about such transactions is available. Existing Rule 901(j) generally provides the person with the duty to report 24 hours from the time of execution to report the required information.

For Reporting Sides. In the Regulation SBSR Adopting Release, the Commission estimated that existing Rule 901 will impose an estimated total first-year burden of approximately 1,394 hours[646] per reporting side for a total first-year burden of 418,200 hours for all reporting sides.[647] The Commission further estimated that existing Rule 901 will impose ongoing annualized aggregate burdens of approximately 687 hours[648] per reporting side for a total aggregate annualized cost of 206,100 hours for all reporting sides.[649] The Commission further estimated that existing Rule 901 will impose initial and ongoing annualized dollar cost

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646 See 80 FR at 14676. The Commission derived its estimate from the following: (355 hours (one-time hourly burden for establishing an OMS) + 172 hours (one-time hourly burden for establishing security-based swap reporting mechanisms) + 180 hours (one-time hourly burden for compliance and ongoing support) = 707 hours (one-time total hourly burden). See Regulation SBSR Adopting Release, 80 FR at 14676, n. 1074 (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. (707 one-time hourly burden + 687 revised annual ongoing hourly burden = 1,394 total first-year hourly burden).

647 See Regulation SBSR Adopting Release, 80 FR at 14676. The Commission derived its estimate from the following: (1,394 hours per reporting side x 300 reporting sides) = 418,200 hours.

648 See id.

649 See id. The Commission derived its estimate from the following: (687 hours per reporting side x 300 reporting sides) = 206,100 hours.

burdens of $201,000 per reporting side, for total aggregate initial and ongoing annualized dollar cost burdens of $60,300,000.[650]

For Registered SDRs. In the Regulation SBSR Adopting Release, the Commission estimated that the first-year aggregate annualized burden on registered SDRs associated with existing Rules 901(f) and 901(g) will be 2,720 burden hours, which corresponds to 272 burden hours per registered SDR.[651] The Commission also estimated that the ongoing aggregate annualized burden associated with existing Rules 901(f) and 901(g) will be 1,520 burden hours, which corresponds to 152 burden hours per registered SDR.[652]

2. Rule 901—Amendments

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

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650 See id. The Commission derived its estimate from the following: ($201,000 per reporting side x 300 reporting sides) = $60,300,000. See Cross-Border Proposing Release, 78 FR at 31113-15.

651 See Regulation SBSR Adopting Release, 80 FR at 14676. See Regulation SBSR Proposing Release, 75 FR at 75250. This figure is based on the following: [(1,200) + (1,520)] = 2,720 burden hours, which corresponds to 272 burden hours per registered SDR.

652 See Regulation SBSR Adopting Release, 80 FR at 14676-77.

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

i. Summary of Collection of Information

In the U.S. Activity Proposal, the Commission proposed certain amendments to Rule 901 to assign the duty to report security-based swaps in certain cross-border situations. In this release, the Commission is adopting those amendments as proposed. Under new Rule 901(a)(2)(ii)(E)(2), in a transaction between an unregistered U.S. person and an unregistered non-U.S. person who is engaging in ANE activity, the sides are required to select the reporting side. In addition, if both sides are unregistered non-U.S. persons and both are engaging in ANE activity, the sides are required to select the reporting side. New Rule 901(a)(2)(ii)(E)(3) addresses the scenario where one side is subject to Rule 908(b) and the other side is not—i.e., one side includes only unregistered non-U.S. persons and that side does not engage in any ANE activity, and the other side includes an unregistered U.S. person or an unregistered non-U.S. person that is engaging in ANE activity. Under Rule 901(a)(2)(ii)(E)(3), the side with the unregistered U.S. person or the unregistered non-U.S. person engaging in ANE activity is the reporting side. New Rule 901(a)(2)(ii)(E)(4) addresses the scenario where neither side includes a counterparty that falls within Rule 908(b)—i.e., neither side includes a registered person, a U.S. person, or a non-U.S. person engaging in ANE activity—but the transaction is effected by or through a registered broker-dealer (including a registered SB SEF). Under Rule 901(a)(2)(ii)(E)(4), the registered broker-dealer is required to report the transaction.[653]

653 In this release, the Commission also is adopting an amendment to Rule 901(d)(9) that requires a registered broker-dealer, if it is required to report a security-based swap under Rule 902(a)(2)(ii)(E)(4), to include in the transaction report its broker ID. As discussed in Section XII(A)(6), infra, the requirement to identify itself in such a transaction report is considered part of the overall burden of establishing and operating the broker-dealer's

ii. Respondents

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

One commenter to the U.S. Activity Proposal recommended that the Commission collect a more complete set of data to more precisely estimate the number of non-U.S. persons that would be affected by the proposed rules.[656] In the U.S. Activity Adopting Release, the Commission stated that, in the absence of comprehensive reporting requirements for security-based swap transactions, and the fact that the location of personnel that arrange, negotiate, or execute a security-based swap transaction is not currently recorded by participants, a more precise estimate of the number of non-U.S. persons affected by the rule is not currently feasible.

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reporting infrastructure. As a result, the burdens associated with identifying itself in the transaction report are included in the burdens discussed below. See infra notes 916-917 and accompanying discussion.

654 See Regulation SBSR Proposed Amendments Release, 80 FR at 14788.

655 See id.

656 See ISDA I at 7. See also id. at 3 (arguing that "the SEC currently lacks the data necessary to precisely estimate . . . the number of registered broker-dealers that intermediate SBS transactions; and the number of additional non-U.S. persons that might incur reporting obligations under the Proposal").

However, because the Commission assumes that all transactions by foreign dealing entities with other non-U.S. persons on U.S. reference entities are arranged, negotiated, or executed by personnel located in the United States, the analysis contained in the U.S. Activity Adopting Release results in an estimate of the upper bound of the number of firms that would likely assess the location of their dealing activity. The results of such an assessment, already accounted for in the U.S. Activity Adopting Release, determines the number of new respondents impacted by the amendments to Rule 901.

The Commission believes that the amendments to Rule 901(a)(2)(ii)(E), as adopted herein, will result in an additional 20 respondents that will be required to report transactions under the amendments to Regulation SBSR.[657] The Commission estimates that these 20 new respondents will consist solely of registered broker-dealers that are required to report one or more security-based swaps by new Rule 901(a)(2)(ii)(E)(4). The Commission acknowledges that amendments to Rule 901(a)(2)(ii)(E) adopted in this release place reporting obligations, in certain circumstances, on unregistered foreign dealing entities, as explained in Section IX(G), supra, which may suggest that a larger number of additional respondents is appropriate. However, the Commission notes that, based on observed transaction data in TIW that provided the basis for its estimate of the number of respondents used in the Cross-Border Adopting Release and Regulation SBSR Adopting Release, unregistered foreign dealing entities were

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657 The Commission is unable to determine, at this time, how many of the non-U.S. persons performing the assessments discussed in the U.S. Activity Adopting Release will result in those entities being required to report transactions under Regulation SBSR. The Commission is therefore basing these burdens on the assumption that all entities performing the assessment will be required to report under Regulation SBSR. Further, the 20 respondents here reflect the 30 registered-broker dealers discussed in the U.S. Activity Proposal, reduced by ten to account for registered broker-dealers that are likely also to register as SB SEFs.

already included in the subset of 245 unregistered person respondents that will not be registered security-based swap dealers or major security-based swap participants.[658]

iii. Total Initial and Annual Reporting Burdens

Pursuant to Rule 901, all security-based swap transactions must be reported to a registered SDR or to the Commission. Together, paragraphs (a), (b), (c), (d), (e), (h), and (j) of Rule 901 set forth the parameters that govern how covered transactions are reported. These reporting requirements impose initial and ongoing burdens on respondents. The Commission believes that these burdens will be a function of, among other things, the number of reportable events and the data elements required to be reported for each such event.

Respondents that fall under the reporting hierarchy in Rule 901(a)(2)(ii) incur certain burdens as a result thereof with respect to their reporting of covered transactions. As stated above, the Commission believes that an estimate of 20 additional respondents will incur the duty to report under Regulation SBSR. This estimate includes all persons that will incur a reporting duty under the amendments to Regulation SBSR that are not already subject to burdens under existing Rule 901, as adopted in the Regulation SBSR Adopting Release.

In the Regulation SBSR Adopting Release, the Commission estimated that there will likely be approximately 3 million reportable events per year under Rule 901.[659] The Commission further estimated that approximately 2 million of these reportable events will consist of uncleared transactions. The Commission estimated that 2 million of the 3 million total reportable events will consist of the initial reporting of security-based swaps as well as the

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658 The 245 respondents that are unregistered persons are calculated as follows: (300 reporting sides – 50 registered security-based swap dealers – 5 registered major security-based swap participants) = 245 unregistered persons that are reporting sides.

659 See Regulation SBSR Adopting Release, 80 FR at 14675.

reporting of any life cycle events. The Commission also estimated that of the 2 million reportable events, approximately 900,000 will involve the reporting of new security-based swap transactions, and approximately 1,100,000 will involve the reporting of life cycle events under Rule 901(e).[660]

Based on the Commission's assessment of the effect of the amendments to Rule 901(a)(2)(ii)(E) adopted herein, the Commission believes that there will be approximately 2,700 additional reportable events per year under Rule 901.[661] Using a similar approach to the Regulation SBSR Adopting Release,[662] while also accounting for security-based swaps that will be reported by a registered broker-dealer, the Commission estimates that, of the 2,700 new reportable events, 1,512 will involve the reporting of new security-based swap transactions, and approximately 1,188 will involve the reporting of life cycle events under Rule 901(e).[663]

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660 The Commission notes that it is adopting an amendment to Rule 901(e)(2). Existing Rule 901(e)(2) states in relevant part that a life cycle event must be reported "to the entity to which the original security-based swap transaction was reported" (emphasis added). As amended, Rule 901(e)(2) now states that a life cycle event would have to be reported "to the entity to which the original security-based swap transaction will be reported or has been reported" (emphasis added). This amendment accounts for the possibility that persons with a duty to report a transaction generally may do so up to 24 hours after the time of execution, a registered clearing agency might submit a report of a termination of an alpha to the alpha SDR before the alpha SDR has received the transaction report of the alpha transaction itself. See supra Section III(I). The Commission does not believe that this amendment to Rule 901(e)(2) gives rise to any PRA burdens not already accounted for in its analysis of burdens under Rule 901. See infra Section XI(B)(2)(b).

661 See U.S. Activity Proposal, 80 FR at 27504.

662 See 80 FR at 14676. The Commission notes that, while the approach for determining the burdens is similar to that used in the Regulation SBSR Adopting Release, the aggregate burden hours for all aspects of Rule 901differ slightly as a result of these new respondents having to report a different number of reportable events.

663 See U.S. Activity Proposal, 80 FR at 27504. The Commission expects 540 reportable events (2,700 x 0.2) to be new security-based swap transactions reported by registered broker-dealers, and 972 reportable events to be other new security-based swap transactions that would be required to be reported under the rule ((2,700 – 540) x 0.45),

Based on these estimates, the Commission believes that Rule 901(a) will result in the additional new respondents resulting from amendments to Rule 901(a)(2)(ii)(E), having a total burden of 7.6 hours attributable to the initial reporting of security-based swaps by respondents to registered SDRs under Rules 901(c) and 901(d) over the course of a year.[664] The Commission further estimates that these respondents will have a total burden of 5.9 hours attributable to the reporting of life cycle events under Rule 901(e) over the course of a year.[665] Therefore, the Commission believes that the amendments to Rule 901(a)(2)(ii)(E), as adopted herein, will result in a total reporting burden for respondents under Rules 901(c) and (d) along with the reporting of life cycle events under Rule 901(e) of 14 burden hours per year. The Commission believes that many reportable events will be reported through electronic means and that the ratio of electronic reporting to manual reporting is likely to increase over time. The Commission believes that the bulk of the burden hours will be attributable to manually reported transactions.[666] Thus,

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for a total of 1,512 reportable events that are new security-based swap transactions. The remaining 1,188 reportable events ((2,700 – 540) x 0.55) are estimated to be life cycle events reportable under Rule 901(e).

664 The Commission calculated the following: ((1,512 x 0.005) / (20 respondents)) = 0.38 burden hours per respondent or 7.6 total burden hours attributable to the initial reporting of security-based swaps. See U.S. Activity Proposal, 80 FR at 27505 (adjusted to reflect revised number of respondents). In the Regulation SBSR Adopting Release, the Commission estimated that it would take approximately 0.005 hours for each security-based swap transaction to be reported. See 80 FR at 14676, n. 1073. See also Regulation SBSR Proposing Release, 75 FR at 75249, n. 195.

665 The Commission calculated the following: ((1,188 x 0.005) / (20 respondents)) = 0.30 burden hours per reporting side or 5.9 total burden hours attributable to the reporting of life cycle events under Rule 901(e). See U.S. Activity Proposal, 80 FR at 27505 (adjusted to reflect revised number of respondents). In the Regulation SBSR Adopting Release, the Commission estimated that it would take approximately 0.005 hours for each security-based swap transaction to be reported. See 80 FR 14676, n. 1073. See also Regulation SBSR Proposing Release, 75 FR at 75249, n. 195.

666 See Regulation SBSR Adopting Release, 80 FR at 14676.

respondents that capture and report transactions electronically will likely incur fewer burden hours than those respondents that capture and report transactions manually.

Based on the foregoing and applying the same calculation methods used in the Regulation SBSR Adopting Release, the Commission estimates that the amendments to Rule 901 proposed in the U.S. Activity Proposal and adopted herein will impose an estimated total first-year burden of approximately 1,362 hours per respondent[667] for a total first-year burden of 27,240 hours for all additional respondents that will incur the duty to report under the adopted amendments to Rule 901(a)(2)(ii)(E)(1)-(4).[668] The Commission estimates that the amendments to Rule 901 will impose ongoing annualized aggregate burdens of approximately 655 hours[669] per respondent for a total aggregate annualized burden of 13,100 hours for those respondents.[670] The Commission further estimates that the amendments to Rule 901 will impose initial and

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667 The Commission derived its estimate from the following: (355 hours (one-time hourly burden for establishing an OMS) + 172 hours (one-time hourly burden for establishing security-based swap reporting mechanisms) + 180 hours (one-time hourly burden for compliance and ongoing support) = 707 hours (one-time total hourly burden). See U.S. Activity Proposal, 80 FR at 27505, n. 454 (436 hours (annual ongoing hourly burden for internal order management) + 0.68 hours (revised annual ongoing hourly burden for security-based swap reporting mechanisms as a result of reduced estimate of number of respondents) + 218 hours (annual-ongoing hourly burden for compliance and ongoing support) = 654.7 hours (one-time total hourly burden). See U.S. Activity Proposal, 80 FR at 27505, n. 454 (revised to take into account reduced estimate of number of respondents) (707 one-time hourly burden + 654.7 revised annual-ongoing hourly burden = 1,362 total first-year hourly burden).

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

669 See supra note 667.

670 The Commission derived its estimate from the following: (655 hours per respondent x 20 respondents) = 13,100 hours.

ongoing annualized dollar cost burdens of $201,000 per respondent, for total aggregate initial and ongoing annualized dollar cost burdens of $4,020,000.[671]

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

i. Summary of Collection of Information

In addition to amendments to Rule 901 to assign the duty to report security-based swaps in certain cross-border situations proposed in the U.S. Activity Proposal, in this release the Commission also is assigning the duty to report security-based swaps that are clearing transactions or are executed on a platform and will be submitted to clearing. To facilitate such reporting, the Commission is adopting amendments to Rules 901(a)(1), 901(a)(2)(i), and 901(a)(3). Specifically, under new Rule 901(a)(1), if a security-based swap is executed on a platform and will be submitted to clearing, the platform on which the transaction was executed shall have the duty to report the transaction to a registered SDR. New Rule 901(a)(2)(i) assigns the reporting duty for a clearing transaction to the registered clearing agency that is a counterparty to the security-based swap. New Rule 901(a)(3) requires any person that has a duty to report a security-based swap that is submitted to clearing—which would be a platform or a reporting side—to provide the registered clearing agency with the transaction ID of the alpha and the identity of the registered SDR to which the alpha will be reported or has been reported.

ii. Respondents

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

The amendments to Rules 901(a)(1) and 901(a)(2)(i) adopted herein assign reporting duties for security-based swap transactions, in certain enumerated cases set forth in these rules, to platforms and registered clearing agencies, respectively. The Commission estimates that these amendments to Rule 901(a) will result in 14 additional respondents incurring the duty to report under Regulation SBSR: ten platforms and four registered clearing agencies.[672] Amended Rule 901(a)(3) will require a person—either the platform upon which the security-based swap was executed or the reporting side for those security-based swaps other than clearing transactions—to report, for those security-bases swaps submitted to a registered clearing agency, the transaction ID of the submitted security-based swap and the identity of the registered SDR to which the transaction will be or has been reported. The Commission believes that new Rule 901(a)(3), as amended, will place reporting obligations on 300 reporting sides[673] and ten platforms.[674]

iii. Total Initial and Annual Reporting Burdens

a) Platforms and Registered Clearing Agencies

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

673 As stated above, the Commission has estimated that there would be 300 reporting sides plus the 20 new broker-dealer respondents discussed in Section XI(B)(2)(a), supra. See also supra note 657.

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

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

In the Regulation SBSR Adopting Release, the Commission estimated that respondents will face three categories of burdens to comply with Rule 901.[675] The Commission believes that platforms and registered clearing agencies will face the same categories of burdens as those identified in the Regulation SBSR Adopting Release for other types of respondents. First, each platform and registered clearing agency will likely have to develop the ability to capture the relevant transaction information.[676] Second, each platform and registered clearing agency will have to implement a reporting mechanism. Third, each platform and registered clearing agency will have to establish an appropriate compliance program and support for the operation of any system related to the capture and reporting of transaction information. The Commission continues to believe that platforms and registered clearing agencies will need to develop

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

676 In the Regulation SBSR Adopting Release, the Commission discussed the development, by reporting sides, of an internal order and trade management system. See 80 FR at 14675-76. The Commission continues to believe that the costs of developing a transaction processing system are comparable to the costs discussed therein. Although the actual reporting infrastructure needed by platforms and registered clearing agencies could have some attributes that differ from the attributes of an internal order and trade management system, the Commission nonetheless believes that the cost of implementing a transaction processing system, and establishing an appropriate compliance program and support for the operation of the system, will be similar to the costs for reporting sides discussed in the Regulation SBSR Adopting Release.

capabilities similar to those highlighted in the Regulation SBSR Adopting Release in order to be able to capture and report security-based swap transactions. The Commission also continues to believe that, once a platform or registered clearing agency's reporting infrastructure and compliance systems are in place, the burden of reporting each individual reportable event will be small when compared to the burdens of establishing the reporting infrastructure and compliance systems.[677] The Commission continues to believe that all of the reportable events, for which platforms and registered clearing agencies will be responsible for reporting, will be reported through electronic means.[678]

In the Regulation SBSR Adopting Release, the Commission estimated that the total burden placed upon reporting sides as a result of existing Rule 901 will be approximately 1,361 hours[679] per reporting side during the first year,[680] before taking into account the reporting of

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677 In the Regulation SBSR Adopting Release, the Commission reiterated its belief that reporting specific security-based swap transactions to a registered SDR—separate from the establishing of infrastructure and compliance systems that support reporting—will impose an annual aggregate cost of approximately $5,400,000. See 80 FR at 14675-77.

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

679 The Commission derived its estimate from the following: (355 hours (one-time hourly burden for establishing an OMS) + 172 hours (one-time hourly burden for establishing security-based swap reporting mechanisms) + 180 hours (one-time hourly burden for compliance and ongoing support) = 707 hours (one-time total hourly burden). See Regulation SBSR Proposed Amendments Release, 80 FR at 14789, n. 298 (436 hours (annual ongoing hourly burden for internal order management) + 218 hours (annual-ongoing hourly burden for compliance and ongoing support) = 654 hours (one-time total hourly burden. See id. (707 one-time hourly burden + 654 revised annual-ongoing hourly burden = 1,361 total first-year hourly burden).

individual reportable events. The Commission believes that the per-entity cost will be comparable for platforms and registered clearing agencies, resulting in a total first-year burden of 1,361 hours and an annual burden of 654 hours for each platform and registered clearing agency, before taking into account the reporting of individual reportable events, under new Rules 901(a)(1) and 901(a)(2)(i), as adopted herein.

In the Regulation SBSR Adopting Release, the Commission estimated that there will be approximately 3 million reportable events per year under Rule 901, of which approximately 2 million will consist of uncleared transactions (i.e., those transactions that will be reported by a reporting side).[681] In the Regulation SBSR Adopting Release, the Commission did not assign reporting duties for the remaining 1 million annual reportable events, which consist of platform-executed alphas, clearing transactions, and any life cycle events pertaining to these two types of transactions.

In this release, the Commission is adopting amendments to Rule 901 that assign the reporting duty for these 1 million reportable events to platforms and registered clearing agencies. The Commission estimates that, of the 1 million reportable events, approximately 370,000 will be new security-based swap transactions.[682] Of these 370,000 new transactions, the Commission estimates that platforms will be responsible for reporting approximately one-third, or 120,000, of them.[683] The Commission estimates that the amendments to Rule 901(a) will result in platforms

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680 See Regulation SBSR Adopting Release, 80 FR at 14675-77.

681 See id.

682 See Regulation SBSR Amendments Proposing Release, 80 FR at 14777, n. 235.

683 Since only platform-executed security-based swaps that will be submitted to a registered clearing agency for clearing are subject to this release, platforms are not responsible for any life cycle event reporting under Rule 901(e). See Regulation SBSR Amendments Proposing Release, 80 FR at 14777.

having a total burden of 600 hours attributable to the reporting of security-based swaps under Rule 901 over the course of a year, or 60 hours per platform.[684]

The Commission estimates that registered clearing agencies will be responsible for reporting 880,000 reportable events.[685] These reportable events consist of 250,000 initial security-based swaps along with 630,000 life cycle events. The Commission estimates that the amendments to Rule 901(a) will result in registered clearing agencies having a total burden of 1,250 hours attributable to the reporting of new security-based swaps to registered SDRs over the course of a year, or 312.5 hours per registered clearing agency.[686] The Commission estimates that the amendments to Rule 901(a) will result in registered clearing agencies having a total burden of 3,150 hours attributable to the reporting of life cycle events to registered SDRs under Rule 901(e) over the course of a year, or 787.5 hours per registered clearing agency.[687] The

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684 The Commission calculates the following: ((120,000 x 0.005) / (10 platforms)) = 60 burden hours per platform or 600 total burden hours attributable to the reporting of security-based swaps. See Regulation SBSR Proposed Amendments Release, 80 FR at 14789-90. In the Regulation SBSR Proposing Release, the Commission estimated that it would take approximately 0.005 hours for each security-based swap transaction to be reported. See 75 FR at 75249, n. 195.

685 As is discussed above, the Commission estimates that platforms will be responsible for reporting only approximately 120,000 of the 1 million new reportable events and registered clearing agencies will be responsible for reporting the remainder.

686 The Commission calculates the following: ((250,000 security-based swaps x 0.005 hours per security-based swap) / (4 registered clearing agencies)) = 312.5 burden hours per registered clearing agency or 1,250 total burden hours attributable to the reporting of such security-based swaps. See Regulation SBSR Proposed Amendments Release, 80 FR at 14789-90. In the Regulation SBSR Proposing Release, the Commission estimated that it would take approximately 0.005 hours for each security-based swap to be reported. See 75 FR at 75249, n. 195.

687 The Commission calculates the following: ((630,000 security-based swaps x 0.005 hours per security-based swap) / (4 registered clearing agencies)) = 787.5 burden hours per registered clearing agency or 3,150 total burden hours attributable to the reporting of life cycle events under Rule 901(e). See Regulation SBSR Proposed Amendments Release, 80 FR at 14789-90. In the Regulation SBSR Proposing Release, the Commission

Commission continues to believe that the amendments will result in a total reporting burden for registered clearing agencies under Rules 901(c) and 901(d) along with the reporting of life cycle events under Rule 901(e) of 4,400 burden hours, or 1,100 hours per registered clearing agency.[688] The Commission believes that all reportable events that will be reported by platforms and registered clearing agencies pursuant to these amendments will be reported through electronic means.

The Commission estimates that the amendments to Rule 901 will impose ongoing annualized aggregate burdens of approximately 714 hours per platform[689] for a total aggregate annualized burden of 7,140 hours for all platforms.[690] The Commission further believes that the first year burden on platforms will be 1,421 burden hours per platform[691] for a total first year burden of 14,210 burden hours for all platforms.[692] The Commission further estimates that the amendments to Rule 901 will impose initial and ongoing annualized dollar cost burdens of

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estimated that it would take approximately 0.005 hours for each security-based swap to be reported. See 75 FR at 75249, n. 195.

688 As is discussed immediately above, the Commission believes that registered clearing agencies would incur a burden of 1,250 hours attributable to the reporting of security-based swaps pursuant to Rule 901(a)(2)(i) along with a burden of 3,150 hours attributable to the reporting of life cycle events under Rule 901(e). As discussed in note 683, supra, a platform is not responsible for the reporting of any life cycle events of any platform-executed security-based swap that will be submitted to clearing.

689 As discussed above, the Commission believes that platforms will incur a burden of 654 hours per year (before taking into account individual transaction reporting) plus a transaction reporting burden of 60 hours per year resulting in a total annual burden per platform of 714 burden hours.

690 The Commission derived its estimate from the following: (714 hours per platform x 10 platforms) = 7,140 hours.

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

692 The Commission derived its estimate from the following: (1,421 hours per platform x 10 platforms) = 14,210 hours.

$201,000 per platform,[693] for total aggregate initial and ongoing annualized dollar cost burden of $2,010,000.[694]

The Commission estimates that the amendments to Rule 901 will impose ongoing annualized aggregate burdens of approximately 1,754 hours per registered clearing agency[695] for a total aggregate annualized burden of 7,016 hours for all registered clearing agencies.[696] The Commission further believes that the first year burden on registered clearing agencies will be 2,461 burden hours per registered clearing agency[697] for a total first year burden of 9,844 burden hours for all registered clearing agencies.[698] The Commission further estimates that the amendments to Rule 901 will impose initial and ongoing annualized dollar cost burdens of $401,000 per registered clearing agency,[699] for total aggregate initial and ongoing annualized dollar cost burden of $1,604,000.[700]

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693 See Regulation SBSR Proposed Amendments Release, 80 FR at 14789, n. 303 (these burdens reflect the dollar costs of hardware and software related expenses, including necessary back-up and redundancy, per SDR connection, for two SDR connections, along with cost of storage capacity, reduced to account only for platforms).

694 The Commission derived its estimate from the following: ($201,000 per reporting person x 10 platforms) = $2,010,000.

695 As discussed above, the Commission believes that registered clearing agencies will incur a burden of 654 hours per year (before taking into account individual transaction reporting) plus a transaction reporting burden of 1,100 hours per year resulting in a total annual burden of 1,754 burden hours.

696 The Commission derived its estimate from the following: (1,754 hours per registered clearing agency x 4 registered clearing agencies) = 7,016 hours.

697 As discussed above, the Commission believes that platforms will incur an initial burden of 707 hours plus an annual burden of 1,754 hours for a total burden of 2,461 per registered clearing agency.

698 The Commission derived its estimate from the following: (2,461 hours per registered clearing agency x 4 registered clearing agencies) = 9,844 hours.

699 See Regulation SBSR Proposed Amendments Release, 80 FR at 14789, n. 303 (reduced to account only for registered clearing agencies). The Commission estimates that a registered clearing agency, as a result of newly adopted Rule 901(e)(1)(ii), might have to

The Commission recognizes that some entities that will qualify as platforms or registered clearing agencies may have already spent time and resources building the infrastructure that will support their eventual reporting of security-based swaps. The Commission notes that, as a result, the burdens and costs estimated herein could be greater than those actually incurred by affected parties as a result of compliance with the amendments to Rule 901(a). Nonetheless, the Commission believes that its estimates represent a reasonable approach to estimating the paperwork burdens associated with the amendments to Rule 901(a).

b) Rule 901(a)(3) Burdens

Rule 901(a)(3), as adopted herein, requires a person who has the duty to report an alpha security-based swap to promptly provide the registered clearing agency to which the alpha has been submitted the transaction ID of the submitted security-based swap and the identity of the registered SDR to which the transaction will be or has been reported. Entities that report alphas to registered SDRs also will already have established the infrastructure needed to submit security-based swaps to a registered clearing agency that acts as a central counterparty; this

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establish connectivity to an alpha SDR, to which it might not otherwise establish connectivity. Accordingly, the Commission estimates that each registered clearing agency will connect to four registered SDRs. The Commission derived the total estimated expense for registered clearing agencies as (($100,000 hardware- and software-related expenses, including necessary backup and redundancy, per SDR connection) x (4 SDR connections per registered clearing agency)) + ($1,000 cost of storage capacity) = $401,000 per registered clearing agency. See Regulation SBSR Proposed Amendments Release, 80 FR at 14776 (estimating the hardware- and software-related expenses per SDR connection at $100,000). This estimate assumes that the systems required to establish connectivity to a registered SDR to meet requirements under Rule 901(e)(1)(ii) are similar to those required by reporting sides to meet regulatory reporting requirements. To the extent that a registered clearing agency is able to utilize a limited purpose connection to report only the information required by Rule 901(e)(1)(ii), the cost of establishing such a connection could be less.

700 The Commission derived its estimate from the following: ($401,000 per registered clearing agency x 4 registered clearing agencies) = $1,604,000.

connectivity to a registered clearing agency is not required by Regulation SBSR. Rule 901(a)(3) will require the person who reports the alpha to a registered SDR to provide the registered clearing agency two additional data elements—the transaction ID of the alpha and the identity of the alpha SDR—along with all of the other transaction information that must be submitted to clear the transaction. The Commission estimates that the additional one-time burden related to the development of the ability to capture and submit these two additional data elements will be 10 burden hours per respondent and the additional one-time burden related to the implementation of a reporting mechanism will be 6 burden hours per respondent.[701] The Commission estimates that the additional ongoing burden related to the ability to capture the additional specific data elements required by amended Rule 901(a)(3) will be 10 burden hours and the additional ongoing burden related to the maintenance of the reporting mechanism will be 2 burden hours, per platform and reporting side.[702]

c) Bunched Order Executions and Allocations

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701 The Commission estimates that the additional burdens related to programming systems to allow for the reporting of the additional data fields will be: [(Sr. Programmer (5 hours) + Sr. Systems Analyst (5 hours)) = 10 burden hours (development of the ability to capture transaction information); (Sr. Programmer (3 hours) + Sr. Systems Analyst (3 hours)) = 6 burden hours (implementation of reporting mechanism)]. The total one-time burden associated with Rule 901(a)(3) will be 16 burden hours per respondent for a total one-time burden of 4,960 hours (16 x 310 (i.e., 300 reporting sides + 10 platforms)). See Regulation SBSR Proposed Amendments Release, 80 FR at 14790, n. 315.

702 The Commission estimates that the additional burdens related to the reporting of these additional data fields will be: [(Sr. Programmer (5 hours) + Sr. Systems Analyst (5 hours)) = 10 burden hours (maintenance of transaction capture system); (Sr. Programmer (1 hour) + Sr. Systems Analyst (1 hour)) = 2 burden hours (maintenance of reporting mechanism)]. The total ongoing burden associated with amended Rule 901(a) will be 12 burden hours per platform and reporting side for a total ongoing burden of 3,720 hours (12 x 310 (i.e., 300 reporting sides + 10 platforms)). For the Commission's preliminary estimate of the burdens associated with Rule 901(a)(3), see Regulation SBSR Proposed Amendments Release, 80 FR at 14790, n. 316.

Bunched order executions and the security-based swaps that result from their allocation are types of security-based swaps that must be reported pursuant to Rule 901(a). In the Regulation SBSR Adopting Release, the Commission provided guidance regarding how Regulation SBSR applies to uncleared bunched order executions and the security-based swaps that result from their allocation.[703] In Section VI, supra, the Commission provides guidance regarding how Regulation SBSR applies to bunched order executions that will be submitted to clearing and the security-based swaps that result from the allocation of any bunched order execution, if the resulting security-based swaps are cleared.

This guidance does not increase the number of respondents under Regulation SBSR or increase the burdens for any respondent.[704] The estimates of the number of reportable events provided by the Commission in the Regulation SBSR Adopting Release included bunched order executions and the security-based swaps that result from their allocation. Thus, there are no burdens associated with this guidance that the Commission has not already taken into account.

d) Prime Brokerage Transactions

In the Regulation SBSR Proposed Amendments Release, the Commission set forth the application of Regulation SBSR to a prime brokerage transaction involving three security-based swap legs. In Section VII(B)(2), supra, the Commission supplements its views to account for cases where the documentation among the relevant market participants provides for a two-legged structure rather than a three-legged structure. Since the Commission's initial estimates of the number of reportable events provided for the reporting of all legs of a prime brokerage

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703 See 80 FR at 14626-27.

704 For the Commission's preliminary estimate of the burdens associated with this guidance, see Regulation SBSR Proposed Amendments Release, 80 FR at 14790.

transaction,[705] those estimates assumed that prime brokerage transactions involved a three-legged structure. In light of the possibility that some prime brokerage transactions may involve only two legs, the Commission may have overestimated the total number of reportable events arising from prime brokerage transactions. However, because prime brokerage transactions are unlikely to represent a significant percentage of reportable events, the Commission continues to believe that its previous estimate of reportable events is reasonable.[706]

3. Rule 901—Aggregate Total PRA Burdens and Costs

Based on the foregoing, the Commission estimates the following aggregate total PRA burdens and costs, by category of entity, resulting from Rule 901, as contained in the Regulation SBSR Adopting Release and as amended in this release.

a. For Platforms

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

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705 See Regulation SBSR Proposed Amendments Release, 80 FR at 14785, n. 276.

706 Combining the Commission's estimates in the Regulation SBSR Adopting Release and this release, the Commission believes that there will be approximately 3 million reportable events per year under Rules 901 and 905. Two million of those reportable events were required to be reported pursuant to provisions adopted in the Regulation SBSR Adopting Release, and 1 million are required to be reported by amendments adopted herein. See supra Section XI(B)(2)(a)(iv).

estimates that the annual aggregate burden resulting from the amendments to Rule 901 will be 726 hours per platform, for a total annual hourly burden of 7,260 hours. Finally, the Commission estimates that the annual dollar cost of the amendments will be $201,000 per platform, for a total annual dollar cost of $2,010,000.

b. For Registered Clearing Agencies

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

c. For New Broker-Dealer Respondents

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

d. For Reporting Sides

In the Regulation SBSR Adopting Release, the Commission estimated that reporting sides will incur a first-year burden of 1,394 hours per reporting side and an hourly burden of 687

hours annually thereafter.[707] As a result of the amendments to Rule 901(a)(3) adopted herein, the Commission believes that these burdens will increase. The Commission believes that reporting sides will have a new first-year burden of 1,422 hours per reporting side,[708] or 426,600 hours for all reporting sides.[709] The Commission further estimates that reporting sides will have a new annual burden after the first year of 699 hours per reporting side,[710] or 209,700 hours for all reporting sides.[711] The Commission also believes that the annual dollar cost of Rule 901 to reporting sides will remain unchanged at $201,000 per reporting side, or $60,300,000 for all reporting sides.

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

1. Existing Rule 905

Existing Rule 905 sets out a process for correcting errors in reported and disseminated security-based swap information. Under Rule 905(a)(1), where a counterparty that was not on the reporting side for a security-based swap transaction discovers an error in the information reported with respect to such security-based swap, that counterparty must promptly notify the reporting side of the error. Under existing Rule 905(a)(2), where a reporting side for a security-based swap transaction discovers an error in the information reported with respect to a security-

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707 See Regulation SBSR Adopting Release, 80 FR at 14676.

708 The Commission estimates the new first year burden as follows: (1,394 hours (original burden resulting from previously adopted rules) + 28 hours (burden resulting from amendments to Rule 901(a)(3))) = 1,422 hours.

709 The Commission estimates the new aggregate burden as follows: (1,422 hours x 300 reporting sides) = 426,600 hours.

710 The Commission estimates the new annual burden as follows: (687 hours (original burden resulting from previously adopted rules) + 12 hours (burden resulting from amendments to Rule 901(a)(3))) = 699 hours.

711 The Commission estimates the new aggregate burden as follows: (699 hours x 300 reporting sides) = 209,700 hours.

based swap, or receives notification from its counterparty of an error, the reporting side must promptly submit to the entity to which the security-based swap was originally reported an amended report pertaining to the original transaction. An amended report must be submitted to a registered SDR in a manner consistent with the policies and procedures of the registered SDR required pursuant to Rule 907(a)(3).

Existing Rule 905(b) sets forth the duties of a registered SDR relating to corrections. If the registered SDR either discovers an error in a transaction on its system or receives notice of an error from a reporting side, the registered SDR must verify the accuracy of the terms of the security-based swap and, following such verification, promptly correct the erroneous information contained in its system. Rule 905(b)(2) further requires that, if such erroneous information relates to a security-based swap that the registered SDR previously disseminated and falls into any of the categories of information enumerated in Rule 901(c), the registered SDR must publicly disseminate a corrected transaction report of the security-based swap promptly following verification of the trade by the counterparties, with an indication that the report relates to a previously disseminated transaction.

In the Regulation SBSR Adopting Release, the Commission estimated that Rule 905(a) will impose an initial, one-time burden associated with designing and building a reporting side's reporting system to be capable of submitting amended security-based swap transactions to a registered SDR. The Commission further estimated that Rule 905(a) will impose on all reporting sides an initial (first-year) aggregate burden of 15,015 hours, which is 50.0 burden hours per

reporting side,[712] and an ongoing aggregate annualized burden of 7,035 hours, which is 23.5 burden hours per reporting side.[713]

With regard to non-reporting-side participants, the Commission estimated in the Regulation SBSR Adopting Release that Rule 905(a) will impose an initial and ongoing burden associated with promptly notifying the reporting side after discovery of an error as required under Rule 905(a)(1).[714] The Commission estimated that the annual burden will be 998,640 hours, which corresponds to 208.05 burden hours per non-reporting-side participant.[715]

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

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712 See Regulation SBSR Adopting Release, 80 FR at 14681-83.

713 See id.

714 See id.

715 This figure was based on the Commission's estimate of (1) 4,800 non-reporting-side participants; and (2) one transaction per day per non-reporting-side participant. The Commission noted that the burdens of Rule 905 on reporting sides and non-reporting-side participants will be reduced to the extent that complete and accurate information is reported to registered SDRs in the first instance pursuant to Rule 901. See id.

716 See id.

analysis of those other rules and, thus, that Rule 905(b) imposes only an incremental additional burden on registered SDRs.[717]

The Commission estimated in the Regulation SBSR Adopting Release that the initial (first-year) aggregate annualized burden on registered SDRs under Rule 905 will be 21,900 burden hours, which corresponds to 2,190 burden hours for each registered SDR.[718] The Commission further estimated that the ongoing aggregate annualized burden on registered SDRs under Rule 905 will be 14,600 burden hours, which corresponds to 1,460 burden hours for each registered SDR.[719]

2. Amendments to Rule 905

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

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

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

718 See id. at 14682, n. 1130-32.

719 See id., nn. 1131, 1133.

Platforms"; and (c) "Rule 901— Correction of Errors in Security-Based Swap Information—For Registered Clearing Agencies."

a. Summary of Collection of Information

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

The amendments to Rule 905 adopted herein do not alter the nature of the duties incurred by registered SDRs. However, amendments to other parts of Regulation SBSR adopted herein will increase the number of security-based swap transactions that must be reported to a registered SDR. Because the Commission assumes that some number of those transactions will be reported with errors and will have to be corrected pursuant to Rule 905, these other amendments will indirectly increase the burdens imposed on registered SDRs by Rule 905(b), because registered

SDRs will have to correct the records for more transactions (and, in appropriate cases, disseminate more corrected transaction reports). These amendments also will increase the number of non-reporting sides and "persons having the duty to report the security-based swap" who will incur duties under Rule 905(a).

b. Respondents

The Commission previously estimated that Rule 905, as adopted in the Regulation SBSR Adopting Release, will have the following respondents: 300 reporting sides that incur the duty to report security-based swap transactions pursuant to existing Rule 901 and thus might incur duties to submit error corrections to registered SDRs under Rule 905(a)(2); up to 4,800 participants of one or more SDRs (or non-reporting sides) that might incur duties under Rule 905(a)(1); and ten registered SDRs that might incur duties under Rule 905(b).[720]

As a result of various amendments being adopted today, the Commission estimates that ten platforms, four registered clearing agencies, and 20 new broker-dealers respondents (exclusive of SB SEFs) also will incur duties under Rule 905(a)(2), because these entities will incur the duty to report initial transactions and thus will likely have to report some error corrections. The Commission's estimates of the number of reporting sides (300), non-reporting sides (4,800), and registered SDRs (10) that will be respondents of Rule 905 remain unchanged. However, the Commission now believes that four registered clearing agencies, ten platforms, and 20 new broker-dealer respondents will also like have to report some error corrections.

c. Total Initial and Annual Reporting Burdens

i. New Broker-Dealer Respondents

[720] See 80 FR at 14681.

In the U.S. Activity Proposal, the Commission preliminarily estimated that the incremental burden imposed on registered broker-dealers to comply with the error reporting requirements of Rule 905 would be equal to 5% of the one-time and annual burdens associated with designing and building the reporting infrastructure necessary for reporting transactions under Rule 901, plus 10% of the corresponding one-time and annual burdens associated with developing the reporting side's overall compliance program required under Rule 901.[721] The Commission preliminarily estimated that the new broker-dealer respondents would incur, as a result of Rule 905(a), an initial (first-year) burden of 48.4 burden hours per respondent, and an ongoing annual burden of 21.8 burden hours. Based on additional information available to the Commission, the Commission now estimates that, as a result of amendments to Rule 901(a)(2)(ii)(E), there will be only 20 new broker-dealer respondents who will be required to report transactions and other reportable events. These new broker-dealer respondents will have error correction duties similar to reporting sides; the Commission believes, therefore, that respondent broker-dealers will incur burdens similar to reporting sides under Rule 905(a). The Commission estimates that these 20 new broker-dealer respondents will each incur an initial (first-year) 48.4 burden hours per respondent,[722] and an annualized burden of 21.8 burden hours

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721 See 80 FR at 27506.

722 This figure is calculated as follows: [(((172 burden hours for one-time development of reporting system) x (0.05)) + ((0.68 burden hours annual maintenance of reporting system) x (0.05)) + ((180 burden hours one-time compliance program development) x (0.1)) + ((218 burden hours annual support of compliance program) x (0.1))) x (20 respondents)] = 48.4 burden hours per new broker-dealer respondent. See supra nn. 667 and 668 for the discussion of estimates of the burden hours for annual maintenance of the reporting system for these new broker-dealer respondents.

per respondent,[723] which remain unchanged from the Commission's preliminary estimates in the Regulation SBSR Proposed Amendments Release.

ii. For Platforms and Registered Clearing Agencies

The Commission is applying the same methodology for calculating the burdens of error reporting by reporting sides to calculating the burdens of error reporting by platforms, under the amendments to Rule 905(a). However, the Commission believes that, on average, a platform will be reporting a greater number of reportable events than, on average, a reporting side. As a result, the Commission believes that a platform will likely be required to report more error corrections than an average reporting side, so the burdens imposed by Rule 905(a) on a platform will likely be greater than the average burden imposed by Rule 905(a) on a reporting side. Thus, for platforms, the Commission estimates that the amendments to Rule 905(a) will impose an initial (first-year) burden of 51.4 hours per platform,[724] and an ongoing annualized burden of 24.8 hours per platform.[725]

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723 This figure is calculated as follows: [((0.68 burden hours annual maintenance of reporting system) x (0.05)) + ((218 burden hours annual support of compliance program) x (0.1))] = 21.8 burden hours per new broker-dealer respondent. See supra nn. 667 and 668 for the discussion of estimates of the burden hours for annual maintenance of the reporting system for these new broker-dealer respondents.

724 See Regulation SBSR Proposed Amendments Release, 80 FR at 14794. This figure is calculated as follows: [((172 burden hours for one-time development of reporting system) x (0.05)) + ((60 burden hours annual maintenance of reporting system) x (0.05)) + ((180 burden hours one-time compliance program development) x (0.1)) + ((218 burden hours annual support of compliance program) x (0.1))] = 51.4 burden hours per platform. See supra note 679 for the discussion of estimates of the burden hours for annual maintenance of the reporting system for platforms. The Commission notes that the Regulation SBSR Proposed Amendments Release inadvertently used 33 burden hours to represent annual maintenance of the reporting system. The correct figure should have been 60 burden hours for the annual maintenance of the reporting system. As a result, the Commission preliminarily estimated a first-year burden, as a result of proposed amendments to Rule 905(a), of 50 hours instead of the correct first-year burden of 51.4

The Commission also believes that this methodology is applicable to the error reporting that will be done by registered clearing agencies as a result of the amendments to Rule 905(a).[726] However, because registered clearing agencies will be responsible for a large number of reportable events, they will likely be required to report more error corrections. As a result, the burdens imposed by Rule 905(a) on registered clearing agencies will be greater. Thus, for registered clearing agencies, the Commission estimates that the amendments to Rule 905(a) will

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hours. See supra note 684 (calculating the annual reporting burden used to determine the annual maintenance burden of the reporting system).

725 See Regulation SBSR Proposed Amendments Release, 80 FR at 14794. This figure is calculated as follows: [((60 burden hours annual maintenance of reporting system) x (0.05)) + ((218 burden hours annual support of compliance program) x (0.1))] = 24.8 hours per platform. See supra note 679 for the discussion of estimates of the burden hours for annual maintenance of the reporting system for platforms. The Commission notes that the Regulation SBSR Proposed Amendments Release inadvertently used 33 burden hours to represent annual maintenance of the reporting system. The correct figure should have been 60 burden hours for the annual maintenance of the reporting system. As a result, the Commission originally estimated an annual ongoing burden, as a result of amendments to Rule 905(a), of 23.5 hours instead of the correct first-year burden of 24.8 hours.

726 In the Regulation SBSR Proposed Amendments Release, the Commission did not include estimates for the burdens that would be imposed on registered clearing agencies for the reporting of errors under Rule 905(a). Upon further review, the Commission recognizes that registered clearing agencies will be required to report error corrections under Rule 905(a). As a result, the Commission has provided estimates of such burdens herein.

impose an initial (first-year) burden of 153.4 hours per registered clearing agency,[727] and an ongoing annualized burden of 76.8 hours per registered clearing agency.[728]

iii. For Non-Reporting Sides

For non-reporting sides, the Commission estimated in the Regulation SBSR Adopting Release that the annual burden (first-year and each subsequent year) will be 998,640 hours, which corresponds to 208.05 burden hours per non-reporting-side participant.[729] As a result of the amendments adopted herein, there will be more transactions reported to registered SDRs (i.e., clearing transactions and platform-executed transactions that will be submitted to clearing) and thus more transactions that in theory could have errors. If a non-reporting side were to discover any such error, it would incur an obligation under Rule 905(a)(1) to notify the person with the initial duty to report (i.e., the platform or registered clearing agency, as applicable) of the error. The Commission believes, however, that the expansion of Regulation SBSR to include clearing

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727 This figure is calculated as follows: [((172 burden hours for one-time development of reporting system) x (0.05)) + ((1100 burden hours annual maintenance of reporting system) x (0.05)) + ((180 burden hours one-time compliance program development) x (0.1)) + ((218 burden hours annual support of compliance program) x (0.1))] = 153.4 burden hours per registered clearing agency. See also Regulation SBSR Adopting Release, 80 FR at 14681-83 (describing the manner in which similar burdens were calculated for reporting sides). See supra note 679 (discussing estimates of the burden hours for annual maintenance of the reporting system for registered clearing agencies).

728 This figure is calculated as follows: [((1100 burden hours annual maintenance of reporting system) x (0.05)) + ((218 burden hours annual support of compliance program) x (0.1))] = 76.8 hours per registered clearing agency. See also Regulation SBSR Adopting Release, 80 FR at 14681-83 (describing the manner in which similar burdens were calculated for reporting sides). See supra note 679 for the discussion of estimates of the burden hours for annual maintenance of the reporting system for platforms.

729 This figure is based on the following: [(1 error notifications per non-reporting-side participant per day) x (365 days/year) x (Compliance Clerk at 0.5 hours/report) x (4,800 non-reporting-side participants)] = 998,640 burden hours, which corresponds to 208.05 burden hours per non-reporting-side participant. See Regulation SBSR Adopting Release, 80 FR at 14681-83.

transactions and platform-executed transactions that will be submitted to clearing will not impact non-reporting sides under Rule 905(a)(1). Such transactions will likely be in standardized security-based swap products that occur electronically pursuant to the rules of such entities. Errors, when they occur, will mostly likely be observed and corrected by the platforms or registered clearing agencies themselves. Therefore, the Commission believes that the amendments adopted herein will not increase the burdens per non-reporting side or change the number of non-reporting sides that are required to comply with Rule 905(a)(1). Consequently, the Commission continues to estimate that the annual burden on non-reporting sides pursuant to Rule 905(a)(1) will be 998,640 hours, which corresponds to 208.05 burden hours per non-reporting-side participant.[730]

iv. For Registered SDRs

Rule 905(b) requires a registered SDR to undertake certain actions if it discovers or receives notice of an error in a transaction report. The Commission stated in the Regulation SBSR Adopting Release that it believes that this duty will represent only a minor extension of other duties of registered SDRs for which the Commission is estimating burdens.[731] A registered SDR is required to have the ability to collect and maintain security-based swap transaction reports and update relevant records under the rules adopted in the SDR Adopting Release.[732] Likewise, a registered SDR must have the capacity to disseminate additional, corrected security-

730 This figure is based on the following: [(1 error notifications per non-reporting-side participant per day) x (365 days/year) x (Compliance Clerk at 0.5 hours/report) x (4,800 non-reporting-side participants)] = 998,640 burden hours, which corresponds to 208.05 burden hours per non-reporting-side participant. See Regulation SBSR Adopting Release, 80 FR at 14681-83.

731 See id. at 14682.

732 See Rules 13n-4(b)(4) and 13n-5 under the Exchange Act, 17 CFR 240.13n-4(b)(4) and 240.13n-5.

based swap transaction reports under Rule 902, the burdens for which were calculated in the Regulation SBSR Adopting Release.[733] Thus, the burdens associated with Rule 905—including systems development, support, and maintenance—are addressed in the Commission's analysis of those other rules.

As discussed above, the Commission estimated in the Regulation SBSR Adopting Release that the initial (first-year) aggregate annualized burden on registered SDRs under Rule 905 will be 21,900 burden hours, which corresponds to 2,190 burden hours for each registered SDR.[734] The Commission further estimated that the ongoing aggregate annualized burden on registered SDRs under Rule 905 will be 14,600 burden hours, which corresponds to 1,460 burden hours for each registered SDR.[735] With respect to Rule 905(a)(2), the Commission stated that the submission of amended transaction reports required under Rule 905(a)(2) likely will not result in a material burden because this will be done electronically though the reporting system that the reporting side must develop and maintain to comply with Rule 901. The overall burdens associated with such a reporting system were addressed in the Commission's analysis of Rule 901.[736]

The amendments adopted herein do not increase the number of registered SDRs that are respondents to Rule 905(b), but they do increase the number of error reports that will have to be processed by each registered SDR. The Commission notes, however, consistent with its analysis in the Regulation SBSR Adopting Release, that any burdens associated with Rule 905 for registered SDRs are a result of systems development, support, and maintenance and are not

733 See 80 FR at 14678.

734 See id. at 14682, n. 1130-32.

735 See id., nn. 1131, 1133.

736 See id. at 14675-77.

dependent on the number of error reports received or processed. Consequently, for registered SDRs, the Commission estimates that the initial (first-year) aggregate annualized burden on registered SDRs under Rule 905, as previously adopted and as amended herein, will be 21,900 burden hours, which corresponds to 2,190 burden hours for each registered SDR.[737] The Commission further estimates that the ongoing aggregate annualized burden on registered SDRs under Rule 905, as previously adopted and as amended herein, will be 14,600 burden hours, which corresponds to 1,460 burden hours for each registered SDR.[738]

v. Aggregate Reporting Burdens Under Rule 905

As discussed above, the Commission estimates that Rule 905(a) will impose an initial (first-year) burden on each reporting side of 50 hours for a total aggregate first-year burden on all reporting sides of 15,000 hours[739] and an ongoing annualized burden on each reporting side of 23.5 hours, for a total aggregate annual burden on all reporting sides of 7,050 hours [740] The Commission estimates that the 20 new broker-dealer respondents will each incur an initial (first-year) 48.4 burden hours per respondent, for a total aggregate first-year burden on all new broker-dealer respondents of 968 hours,[741] and an ongoing annualized burden of 21.8 burden hours per

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737 This figure is based on the following: [(730 burden hours to develop protocols) + (1,460 burden hours annual support)) x (10 registered SDRs)] = 21,900 burden hours, which corresponds to 2,190 burden hours per registered SDR. See id. at 14681-83.

738 This figure is based on the following: [(1,460 burden hours annual support) x (10 registered SDRs)] = 14,600 burden hours, which corresponds to 1,460 burden hours per registered SDR. See SBSR Adopting Release, 80 FR at 14681-83.

739 This figure is calculated as follows: (50.0 burden hours per reporting side x 300 reporting sides) = 15,000 burden hours.

740 This figure is calculated as follows: (23.5 burden hours per reporting side x 300 reporting sides) = 7,050 burden hours.

741 This figure is calculated as follows: (48.4 burden hours per new broker-dealer respondent x 20 new respondents) = 968 burden hours.

respondent, for a total aggregate annual burden on all new broker-dealer respondents of 436 hours.[742]

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

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

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742 This figure is calculated as follows: (21.8 burden hours per new broker-dealer respondent x 20 new respondents) = 436 burden hours.

743 This figure is calculated as follows: (51.4 burden hours per platform x 10 platforms) = 514 burden hours.

744 This figure is calculated as follows: (22.1 burden hours per platform x 10 platforms) = 221 burden hours.

745 This figure is calculated as follows: (153.4 burden hours per registered clearing agency x 4 registered clearing agencies) = 612.6 burden hours.

746 This figure is calculated as follows: (76.8 burden hours per registered clearing agency x 4 registered clearing agencies) = 307.2 burden hours.

747 This figure is calculated as follows: (208.05 burden hours per non-reporting-side participant x 4,800 non-reporting-side participants) = 998,640 burden hours.

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

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

D. Other Duties of Participants—Rule 906

1. Existing Rule 906

Existing Rule 906(a) sets forth a procedure designed to ensure that a registered SDR obtains relevant UICs for both sides of a security-based swap, not 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,

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748 This figure is calculated as follows: (2,190 burden hours per registered SDR x 10 registered SDRs) = 21,900 burden hours.

749 This figure is calculated as follows: (2,190 burden hours per registered SDR x 10 registered SDRs) = 21,900 burden hours.

750 This figure is calculated as follows: (15,000 burden hours for reporting sides) + (968 burden hours for new broker-dealer respondents) + (514 burden hours for platforms) + (612.6 burden hours for registered clearing agencies) + (998,640 burden hours for non-reporting-side participants) + (21,900 burden hours for registered SDRs) = 1,037,634.6 burden hours during the first year.

751 This figure is calculated as follows: (7,050 burden hours for reporting sides) + (436 burden hours for new broker-dealer respondents) + (221 burden hours for platforms) + (307.2 burden hours for registered clearing agencies) + (998,640 burden hours for non-reporting-side participants) + (14,600 burden hours for registered SDRs) = 1,021,254.2 burden hours during each year following the first year.

and trader ID of each direct counterparty. Rule 906(a) further requires the registered SDR, once a day, to send a report to each participant identifying, for each security-based swap to which that participant is a counterparty, the security-based swap(s) for which the registered SDR lacks counterparty ID and (if applicable) broker ID, trading desk ID, and trader ID. Finally, Rule 906(a) requires a participant that receives such a report to provide the missing ID information to the registered SDR within 24 hours.

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

Existing Rule 906(c) requires each participant that is a registered security-based swap dealer or registered major security-based swap participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any security-based swap transaction reporting obligations in a manner consistent with Regulation SBSR. In addition, Rule 906(c) requires each such participant to review and update its policies and procedures at least annually.

For Registered SDRs. Rule 906(a) requires a registered SDR, once a day, to send a report to each of its participants identifying, for each security-based swap to which that participant is a counterparty, any security-based swap(s) for which the registered SDR lacks counterparty ID and (if applicable) broker ID, trading desk ID, and trader ID. In the Regulation SBSR Adopting Release, the Commission estimated that there will be a one-time, initial burden of 112 burden hours for a registered SDR to create a report template and develop the necessary

systems and processes to produce a daily report required by Rule 906(a).[752] The Commission estimated that there will be an ongoing annualized burden of 308 burden hours for a registered SDR to generate and issue the daily reports, and to enter into its systems the UIC information supplied by participants in response to the daily reports.[753]

Accordingly, in the Regulation SBSR Adopting Release, the Commission estimated that the initial aggregate annualized burden for registered SDRs under Rule 906(a) will be 4,200 burden hours for all SDR respondents, which corresponds to 420 burden hours per registered SDR.[754] The Commission estimated that the ongoing aggregate annualized burden for registered SDRs under Rule 906(a) will be 3,080 burden hours, which corresponds to 308 burden hours per registered SDR.[755]

For Participants. Existing Rule 906(a) requires any participant of a registered SDR that receives a report from that registered SDR to provide the missing UICs to the registered SDR within 24 hours. All SDR participants will likely be the non-reporting side for at least some transactions to which they are counterparties; therefore, all participants will be impacted by Rule 906(a). In the Regulation SBSR Adopting Release, the Commission estimated that the initial and ongoing annualized burden under Rule 906(a) for all participants will be 199,728 burden hours, which corresponds to 41.6 burden hours per participant.[756]

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752 See 80 FR at 14683-85.

753 See id.

754 See id.

755 See id.

756 This figure is based on the Commission's estimates of 4,800 participants and approximately 1.14 transactions per day per participant. See id.

Existing Rule 906(b) requires every participant of a registered SDR to provide that SDR an initial ultimate parent/affiliate report and updates as needed. In the Regulation SBSR Adopting Release, the Commission estimated that there will be 4,800 participants, that each participant will connect to two registered SDRs on average, and that each participant will submit two Rule 906(b) reports each year.[757] Accordingly, the Commission estimated that the initial and ongoing aggregate annualized burden associated with Rule 906(b) will be 9,600 burden hours, which corresponds to 2 burden hours per participant.[758]

Existing Rule 906(c) requires each participant that is a registered security-based swap dealer or registered major security-based swap participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with applicable security-based swap reporting obligations, and to review and update such policies and procedures at least annually. In the Regulation SBSR Adopting Release, the Commission estimated that the one-time, initial burden for each covered participant[759] to create these written policies and procedures will be approximately 216 burden hours.[760] The Commission also estimated the burden of maintaining such policies and procedures, including a full review at least

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757 See id. The Commission estimated 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.

758 See id. This estimated aggregate burden represents an upper estimate for all participants; the actual burden could be reduced to the extent that the registered SDR permits one member of the group to report the ultimate parent(s) and affiliates on behalf of each participant member of the group. See supra note 608.

759 Only some participants of registered SDRs are subject to the requirements of Rule 906(c). As used in this release, any participant that is "covered" by Rule 906(c) is deemed a "covered participant."

760 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. See 80 FR at 14684.

annually, will be approximately 120 burden hours for each covered participant.[761] Accordingly, the Commission estimated the initial aggregate annualized burden associated with Rule 906(c) to be 18,480 burden hours, which corresponds to 336 burden hours per covered participant.[762] The Commission estimated the ongoing aggregate annualized burden associated with Rule 906(c) to be 6,600 burden hours, which corresponds to 120 burden hours per covered participant.[763]

In sum, the Commission in the Regulation SBSR Adopting Release estimated that the total initial aggregate annualized burden associated with Rule 906 will be 230,370 burden hours, and that the total ongoing aggregate annualized burden will be 217,370 burden hours for all participants.[764]

2. Amendments to Rule 906

a. Rule 906(a)

In this release, the Commission is making only a minor amendment to Rule 906(a)[765] which does not affect the estimated number of respondents or the estimated burdens for existing respondents to the rule.

However, because of the amendments to Rule 901(a) adopted herein, the scope of transactions covered by Regulation SBSR is increasing. As a result, a registered SDR will have to review a larger number of transactions to assess whether there is missing UIC information. The Commission believes that the process whereby a registered SDR reviews transactions and

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761 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. See id.

762 See id.

763 See id.

764 See id.

765 See supra note 312.

generates the associated reports will be automated, and that the costs of performing this automated review will be approximately the same even if the review covers a larger set of transactions. Furthermore, although Rule 906(a) notices sent by a registered SDR could in some cases be longer because they cover more transactions, the amendments to Rule 901(a) will not increase the number of participants (4,800) to which the registered SDR will likely have to send such notices. Therefore, the Commission does not believe that the larger number of transactions will result in any burdens on registered SDRs under Rule 906(a) that were not already accounted for in the Regulation SBSR Adopting Release.[766] Thus, the Commission believes that its original burden estimates for registered SDRs to comply with Rule 906(a) remain appropriate.

With respect to the 4,800 participants that will likely be required to provide missing UIC information to a registered SDR for at least some transactions, the Commission is revising its original estimate of the burdens imposed by Rule 906(a) because participants will have to provide missing UIC information for a larger number of transactions. Although a registered SDR's process for generating a Rule 906(a) notice is likely to be automated, at least some participants might rely on manual procedures to reply. In the Regulation SBSR Adopting Release, the Commission estimated that the initial and ongoing annualized burden under Rule

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766 The Commission estimated that a registered SDR will incur an initial, one-time burden of 112 hours to create a report template and develop the necessary systems and processes to produce a daily report required by Rule 906(a). The Commission also estimated that a registered SDR will incur an ongoing annualized burden of 308 hours to generate and issue the daily reports, and to enter into its systems the ID information supplied by participants in response to the daily reports. See Regulation SBSR Adopting Release, 80 FR at 14684.

906(a) for all participants will be 199,728 burden hours, which corresponds to 41.6 burden hours per participant.[767]

The Commission continues to believe that there will be approximately one million additional reportable events under Regulation SBSR.[768] Of these one million reportable events, the Commission estimates that approximately 120,000 platform-executed alphas reflected in estimates in the Regulation SBSR Adopting Release could have missing UIC information. Both sides of a platform-executed alpha might have to report missing UIC information since neither side is the reporting side and thus both sides are non-reporting sides. Therefore, the Commission believes that each participant, on average, will now be required provide missing UIC information for 1.27 transactions each day.[769] As a result, the Commission believes that the burden placed on each participant by Rule 906(a) will be 46.4 hours annually,[770] for a total burden of 222,504 hours for all participants.

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767 This figure is based on the Commission's estimates of (1) 4,800 participants; and (2) approximately 1.14 transactions per day per participant. See id.

768 See Regulation SBSR Adopting Release, 80 FR at 14675-76.

769 The Commission originally estimated that participants could have to provide missing UIC information for up to two million security-based swap transactions annually. This results in each participant, on average, having to provide missing information for 1.14 transactions each day. As a result, the Commission originally estimated the total burden to be 199,728 hours, or 41.6 hours annually for each participant. See 80 FR at 14684. The Commission now believes that these same participants will be responsible for providing missing UIC information for a greater number of security-based swap transactions. The Commission estimates: [(((2,000,000 original estimate of annual security-based swap transactions for which mission UIC information would need to be provided to the SDR) + ((120,000 additional security-based swap transactions for which UIC information is required) x (2 since both sides could be required to provide missing UIC information))) / 4,800 participants) / (365 days/year)] = 1.27 average security-based swap transactions per day for which each participant will need to provide missing UIC information.

770 The Commission estimates that the total burden for all participants will be 222,504 calculated as follows: (1.27 missing information reports per day) x (365 days per year) x

b. Rule 906(b)—Amendments

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

Platforms and registered clearing agencies were not covered respondents to Rule 906(b) when the Commission estimated the burdens of Rule 906(b), as adopted in the Regulation SBSR Adopting Release. Therefore, the amendment to Rule 906(b) adopted today that specifically excludes them does not affect the Commission's estimate in the Regulation SBSR Adopting Release of the burdens associated with Rule 906(b).

However, externally managed investment vehicles were considered respondents of Rule 906(b), as adopted in the Regulation SBSR Adopting Release, and the estimated burdens on all participant respondents in that adopting release included burdens imposed on externally managed investment vehicles.[771] Therefore, the amendment to Rule 906(b) adopted herein that excludes externally managed investment vehicles has the effect of reducing the number of respondents

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(Compliance Clerk at 0.1 hours/report) x (4,800 participants) = 222,504 hours/year or 46.4 hours for each participant.

771 See 80 FR at 14684.

and the associated burdens of Rule 906(b) that the Commission estimated in the Regulation SBSR Adopting Release. Based on an analysis of TIW transaction data, the Commission believes that, of the 4,800 estimated participants, approximately 1,920 are externally managed investment vehicles.[772] Therefore, the Commission now estimates that there are only 2,880 participant respondents to Rule 906(b), as amended herein. In the Regulation SBSR Adopting Release, the Commission further estimated that each respondent to Rule 906(b) will submit two reports per year and that each report will result in one burden hour.[773] The Commission continues to believe that each respondent will incur two burden hours per year in connection with Rule 906(b), but is reducing its estimate of total burden hours for all participants from 9,600 (estimated in the Regulation SBSR Adopting Release) to 5,760 (2,880 respondents x 2 hours/respondent = 5,760 hours).

c. Rule 906(c)—Amendments

i. Summary of Collection of Information

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

ii. Respondents

The amendments to Rule 906(c) adopted today will extend the requirements of existing Rule 906(c) to registered clearing agencies, platforms, and registered broker-dealers that incur duties to report security-based swaps pursuant to Rule 901(a)(2)(ii)(E)(4). The

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772 Roughly 40% of TIW accounts on average have been identified by staff as private funds or registered investment companies, 4,800 x 0.4 = 1,920.

773 See id.

Commission estimates that there will be 4 registered clearing agencies, 10 platforms, and 20 registered broker-dealers that will become subject to Rule 906(c).

iii. Total Initial and Annual Reporting and Recordkeeping Burdens

For Registered Clearing Agencies and Platforms. In the Regulation SBSR Proposed Amendments Release, the Commission preliminarily estimated that the one-time, initial burden for each registered clearing agency or platform to adopt written policies and procedures as required under the amendment to Rule 906(c) would be similar to the Rule 906(c) burdens for other covered participants.[774] In the Regulation SBSR Adopting Release, the Commission estimated that Rule 906(c) will impose a burden of approximately 216 hours on each registered security-based swap dealer or registered major security-based swap participant (together, "covered participants").[775] In addition, the Commission estimated that the burden of maintaining such policies and procedures, including a full review at least annually, will be approximately 120 burden hours for each covered participant.[776] The Commission continues to believe that, by amending Rule 906(c) to apply the policies and procedures requirement to registered clearing

774 See 80 FR at 14797.

775 See id. This figure is based on the following: [(Sr. Programmer at 40 hours) + (Compliance Manager at 40 hours) + (Compliance Attorney at 40 hours) + (Compliance Clerk at 40 hours) + (Sr. Systems Analyst at 32 hours) + (Director of Compliance at 24 hours)] = 216 burden hours per registered clearing agency or platform. 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.

776 See id. This figure is based on the following: [(Sr. Programmer at 8 hours) + (Compliance Manager at 24 hours) + (Compliance Attorney at 24 hours) + (Compliance Clerk at 24 hours) + (Sr. Systems Analyst at 16 hours) + (Director of Compliance at 24 hours)] = 120 burden hours per registered clearing agency or platform. 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.

agencies and platforms, these entities will face burdens similar to those of the existing covered participants. Accordingly, the Commission estimates that the initial aggregate annualized burden associated with the amendments to Rule 906(c) will be 4,704 burden hours, which corresponds to 336 burden hours per registered clearing agency or platform.[777] The Commission estimates that the ongoing aggregate annualized burden associated with the amendments to Rule 906(c) will be 1,680 burden hours, which corresponds to 120 burden hours per registered clearing agency or platform.[778]

For Registered Broker-Dealers. The amendments to Rule 906(c) will require each registered broker-dealer that becomes a participant solely as a result of incurring a reporting duty under Rule 901(a)(2)(ii)(E)(4) (a "respondent broker-dealer") to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with applicable security-based swap transaction reporting obligations. The amendments to Rule 906(c) also will require each respondent broker-dealer to review and update such policies and procedures at least annually.

In the U.S. Activity Proposal, the Commission preliminarily estimated that the one-time, initial burden for each respondent broker-dealer to adopt written policies and procedures as required under the amendment to Rule 906(c) would be similar to the Rule 906(c) burdens for existing covered participants.[779] In the Regulation SBSR Adopting Release, the Commission estimated that Rule 906(c) will impose a burden of approximately 216 hours on each covered

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777 This figure is based on the following: [(216 + 120 burden hours) x (14 registered clearing agencies and platforms)] = 4,704 burden hours.

778 This figure is based on the following: [(120 burden hours) x (14 registered clearing agencies and platforms)] = 1,680 burden hours.

779 See U.S. Activity Proposal, 80 FR at 27506.

participant.[780] In addition, the Commission estimated that the burden of maintaining such policies and procedures, including a full review at least annually, will be approximately 120 burden hours for each covered participant.[781] The Commission continues to believe that, by amending Rule 906(c) to impose the policies and procedures requirement on respondent broker-dealers, these entities will face burdens similar to those of other covered participants. Accordingly, the Commission estimates that the initial aggregate annualized burdens on respondent broker-dealers associated with the amendment to Rule 906(c) will be 6,720 burden hours, which corresponds to 336 burden hours per respondent broker-dealer.[782] The Commission estimates that the ongoing aggregate annualized burdens on all respondent broker-dealers associated with the amendments to Rule 906(c) will be 2,400 burden hours, which corresponds to 120 burden hours per respondent broker-dealer.[783]

3. Rule 906—Aggregate Total PRA Burdens and Costs

Based on the foregoing, the Commission estimates the following aggregate total PRA burdens and costs, by category of entity, resulting from Rule 906. These figures add the burdens and costs estimated in the Regulation SBSR Adopting Release for the existing covered participants with the burdens and costs estimated for the additional covered participants resulting from the amendments to Rule 906(c) adopted herein.

a. For Platforms and Registered Clearing Agencies

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780 See supra note 775.

781 See supra note 776.

782 This figure is based on the following: (216 + 120 burden hours) x (20 respondent broker-dealers = 6,720 burden hours.

783 This figure is based on the following: (120 burden hours) x (20 respondent broker-dealers) = 2,400 burden hours.

The Commission estimates that the one-time, initial burden for each registered clearing agency or platform to adopt written policies and procedures as required under the amendments to Rule 906(c) will be similar to the Rule 906(c) burdens discussed in the Regulation SBSR Adopting Release for covered participants, and will be approximately 216 burden hours per registered clearing agency or platform.[784] This figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing. In addition, the Commission estimates the burden of maintaining such policies and procedures, including a full review at least annually, as required by Rule 906(c), will be approximately 120 burden hours for each registered clearing agency or platform.[785] This figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining internal controls systems, and performing necessary testing. Accordingly, the Commission estimates that the initial, or first year, aggregate annualized burden associated with the amendments to Rule 906(c) will be 4,704 burden hours, which corresponds to 336 burden hours per registered clearing agency or platform.[786] The Commission estimates that the ongoing aggregate annualized burden associated with the amendments to Rule 906(c) will be 1,680 burden hours, which corresponds to 120 burden hours per registered clearing agency or platform.[787]

b. For Registered SDRs

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784 See supra note 775.

785 See supra note 776.

786 See supra note 777.

787 See supra note 778.

As a result of changes in other rules, registered SDRs will have to identify missing UIC information from a larger number of transactions and send more requests to non-reporting sides seeking such missing UIC information.

In the Regulation SBSR Adopting Release, the Commission estimated that there will be a one-time, initial burden of 112 burden hours for each registered SDR to create a report template and develop the necessary systems and processes to produce a daily report required by Rule 906(a), or 1,120 burden hours for all SDRs.[788] The Commission believes that this estimate continues to be valid, as an SDR's initial investment in the infrastructure necessary to carry out its duties under Rule 906(a) should be unaffected by the precise number of transactions covered by Regulation SBSR.

In the Regulation SBSR Adopting Release, the Commission estimated that there will be an ongoing annualized burden of 308 burden hours for each registered SDR to generate and issue the daily reports, and to enter into its systems the UIC information supplied by participants in response to the daily reports, or 3,308 burden hours for all SDRs.[789] Although the scope of security-based swap transactions covered by Regulation SBSR has increased, the Commission continues to believe that there will be an ongoing annualized burden of 308 burden hours for a registered SDR to generate and issue the daily reports, and to enter into its systems the UIC information supplied by participants in response to the daily reports.

c. For Participants

The Commission estimates that, as a result of the amendments adopted herein, the initial and ongoing annualized burden under Rule 906(a) for all participants will be 222,504 burden

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788 See 80 FR at 14683-85.

789 See id.

hours, which corresponds to 46.4 burden hours per participant.[790] The Commission notes that each participant will, on average, have to provide missing UIC information for more security-based swap transactions than it would have prior to the amendments adopted in this release. The revised estimates account for these additional transactions.

In the Regulation SBSR Adopting Release, the Commission estimated that the initial and ongoing aggregate annualized burden associated with Rule 906(b) will be 9,600 burden hours, which corresponds to 2 burden hours per participant.[791] The amendment to Rule 906(b) does not create any new respondents or impose any new burdens on existing respondents, as the amendment excludes platforms, registered clearing agencies, registered broker-dealers, and externally managed investment vehicles from having to report ultimate parent and affiliate information to registered SDRs of which they are participants. Therefore, the Commission's estimate of the burdens imposed by Rule 906(b) on individual participants remains unchanged. However, because of the exclusions discussed above, only 2,880 participants will be subject to the requirement of Rule 906(b). As a result, the aggregate annualized burden associated with Rule 906(b) will fall from 9,600 hours (estimated in the Regulation SBSR Adopting Release) to 5,760 hours.

d. For New Broker-Dealer Respondents

In this release, the Commission is adopting an amendment to Rule 906(c) that extends the requirement to establish policies and procedures for carrying out reporting duties under Regulation SBSR to platforms, registered clearing agencies, and registered broker-dealers that

790 See supra note 770 and accompanying text.

791 See Regulation SBSR Adopting Release, 80 FR at 14683-85. This figure is based on the following: [(Compliance Clerk at 0.5 hours per report) x (2 reports/year/SDR connection) x (2 SDR connections/participant) x (4,800 participants)] = 9,600 burden hours, which corresponds to 2 burden hours per covered participant.

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

e. Aggregate Rule 906 Burdens

In sum, Rule 906(a) will place a total first-year burden on registered SDRs of 1,120 hours.[792] Rule 906(a) will place a total annual burden on registered SDRs and covered participants of 269,384 hours.[793] Rule 906(b) will place a total annual burden on covered participants of 5,760 hours.[794] Rule 906(c) will place a total first-year burden on covered

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792 The Commission calculated this estimate as follows: (112 hours (first year burden on SDRs as a result of Rule 906(a)) x 10 SDRs) = 1,120 hours.

793 The Commission calculated this estimate as follows: ((308 hours (annual burden on SDRs as a result of Rule 906(a)) x 10 SDRs)) + ((55.5 hours (annual burden on participants as a result of Rule 906(a)) x 4,800 participants) = 269,384 hours.

794 The Commission calculated this estimate as follows: (2 hours (annual burden on participants as a result of Rule 906(b)) x 2,880 revised number of participants impacted by Rule 906(b)) = 5,760 hours.

participants of 19,224 hours.[795] Rule 906(c) will place a total annual burden on covered participants of 10,680 hours.[796] These figures combine the burdens associated with Rule 906 estimated in the Regulation SBSR Adopting Release with the revisions to these burdens associated with the amendments to Rule 906 adopted herein.

E. Policies and Procedures of Registered SDRs—Rule 907

1. Existing Rule 907

Existing Rule 907(a) requires a registered SDR to establish and maintain written policies and procedures with respect to the receipt, reporting, and public dissemination of security-based swap transaction information. Existing Rule 907(c) requires a registered SDR to make its policies and procedures available on its website. Existing Rule 907(d) requires a registered SDR to review, and update as necessary, the policies and procedures that it is required to have by Regulation SBSR at least annually. Existing Rule 907(e) requires a registered SDR to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to Regulation SBSR and the registered SDR's policies and procedures established thereunder.

2. Rule 907—Amendments

In this release, the Commission is making only one amendment to Rule 907: The Commission is revising Rule 907(a)(6) to carve out platforms, registered clearing agencies, externally managed investment vehicles, and registered broker-dealers (including SB SEFs) that

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795 The Commission calculated this estimate as follows: (216 hours (first-year burden on each respondent) x 89 respondents (i.e., 55 registered security-based swap dealers + registered major security-based swap participants + 20 new broker-dealer respondents + 14 platforms and registered clearing agencies) = 19,224 hours.

796 The Commission calculated this estimate as follows: (120 hours (annual burden per covered participants) x 89 covered participants) = 10,680 hours.

become a participant of a registered SDR solely as a result of making a report to satisfy an obligation under Rule 901(a)(2)(ii)(E)(4) from the requirement in Rule 907(a)(6) that a registered SDR have policies and procedures for obtaining ultimate parent and affiliate information from its participants, as contemplated by an amendment to Rule 906(b) adopted herein. The amendment to Rule 907(a)(6) has the effect of preventing existing respondent SDRs from incurring additional burdens because they will not have to obtain ultimate parent and affiliate information from additional types of participants.

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

3. Rule 907—Aggregate Total PRA Burdens and Costs

In the Regulation SBSR Adopting Release, the Commission estimated that the one-time, initial burden for a registered SDR to adopt written policies and procedures as required under existing Rule 907 will be approximately 15,000 hours. In addition, the Commission estimated the annual burden of maintaining such policies and procedures, including a full review at least

annually, making available its policies and procedures on the registered SDR's website, and information or reports on non-compliance (as required under Rule 907(e)) will be approximately 30,000 hours for each registered SDR. The Commission estimated that the total initial annualized burden associated with Rule 907 will be approximately 45,000 hours per registered SDR, which corresponds to an initial annualized aggregate burden of approximately 450,000 hours.[797] The Commission further estimated that the ongoing annualized burden associated with Rule 907 will be approximately 30,000 hours per registered SDR,[798] which corresponds to an ongoing annualized aggregate burden of approximately 300,000 hours.[799]

As a result of amendments made to various provisions of Regulation SBSR in this release, registered SDRs will need to broaden the scope of the written policies and procedures that Rule 907 requires them to have.[800] The Commission believes that a registered SDR's expansion of its policies and procedures in response to the amendments to Regulation SBSR

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797 This figure is based on the following: [((15,000 burden hours per registered SDR) + (30,000 burden hours per registered SDR)) x (10 registered SDRs)] = 450,000 initial annualized aggregate burden hours during the first year.

798 See Regulation SBSR Adopting Release, 80 FR at 14685. 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.

799 See Regulation SBSR Adopting Release, 80 FR at 14685-86. This figure is based on the following: [(30,000 burden hours per registered SDR) x (10 registered SDRs)] = 300,000 ongoing, annualized aggregate burden hours.

800 For example, new Rule 901(e)(1)(ii) requires a registered clearing agency to report to the alpha SDR whether or not it has accepted the alpha for clearing. The alpha SDR must revise its policies and procedures to allow for the information from the registered clearing agency to be connected to the initial report of the alpha. See supra Section III(G). In addition, new Rule 902(c)(8) requires a registered SDR to avoid public dissemination of a security-based swap that has been rejected from clearing or rejected by a prime broker if the original transaction report has not yet been publicly disseminated. See supra Section III(J). A registered SDR must adjust its policies and procedures for public dissemination to comply with new Rule 902(c)(8).

adopted in this release represents an "add-on" to the burdens already calculated with respect to the SDR policies and procedures under existing Rule 907. The Commission estimates the incremental burden to be an additional 10% of the one-time and annual burdens estimated to result from existing Rule 907.

Accordingly, the Commission believes that the one-time, initial burden for a registered SDR to adopt written policies and procedures as required under Rule 907 will be approximately 16,500 hours.[801] In addition, the Commission estimates the annual burden of maintaining such policies and procedures, including a full review at least annually, making available its policies and procedures on the registered SDR's website, and information or reports on non-compliance, as required under Rule 907(e), will be approximately 33,000 hours for each registered SDR.[802] The Commission therefore 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 495,000 hours.[803] The Commission further estimates that the ongoing annualized burden associated with Rule 907 will be approximately 33,000 hours per registered SDR, which corresponds to an ongoing annualized aggregate burden of approximately 330,000 hours.[804]

F. Cross-Border Matters—Rule 908

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801 This figure is calculated as follows: [15,000 one-time written policies and procedures development x (1.1)] = 16,500.

802 This figure is calculated as follows: [(30,000 one-time written policies and procedures development x (1.1)] = 33,000.

803 This figure is based on the following: [((16,500 burden hours per registered SDR) + (33,000 burden hours per registered SDR)) x (10 registered SDRs)] = 495,000 initial annualized aggregate burden hours during the first year.

804 This figure is based on the following: [(33,000 burden hours per registered SDR) x (10 registered SDRs)] = 330,000 ongoing, annualized aggregate burden hours.

1. Existing Rule 908

Rule 908(a) defines when certain cross-border security-based swap transactions are subject to regulatory reporting and/or public dissemination. Rule 908(a), as adopted in the Regulation SBSR Adopting Release, covered security-based swaps consisting of only certain counterparty pairs. Existing Rule 908(a)(1)(i) provides that a security-based swap shall be subject to regulatory reporting and public dissemination if "[t]here is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction.," and existing Rule 908(a)(1)(ii) provides that a security-based swap shall be subject to regulatory reporting and public dissemination if "[t]he security-based swap is submitted to a clearing agency having its principal place of business in the United States." Existing Rule 908(a)(2) provides that a security-based swap not included within Rule 908(a)(1) would be subject to regulatory reporting but not public dissemination "if there is a direct or indirect counterparty on either or both sides of the transaction that is a registered security-based swap dealer or a registered major security-based swap participant." Rule 908(a), as adopted in the Regulation SBSR Adopting Release, did not otherwise address when an uncleared security-based swap involving only unregistered non-U.S. persons would be subject to regulatory reporting and/or public dissemination.

Rule 908(b) defines when a person might incur obligations under Regulation SBSR. Existing Rule 908(b) provides that, notwithstanding any other provision of Regulation SBSR, a person shall not incur any obligation under Regulation SBSR unless it is a U.S. person, a registered security-based swap dealer, or a registered major security-based swap participant.

The Commission stated in the Regulation SBSR Adopting Release that Rules 908(a) and 908(b) do not impose any collection of information requirements and that, to the extent that a security-based swap transaction or a person is subject to Rule 908(a) or 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).[805]

Existing Rule 908(c) sets forth the requirements for a substituted compliance request relating to regulatory reporting and public dissemination of security-based swaps in a particular foreign jurisdiction, and is the only part of Rule 908 to impose paperwork burdens. Rule 908(c) is not being amended by this release. In the Regulation SBSR Adopting Release, the Commission estimated that it will receive approximately ten substituted compliance requests in the first year and two requests each subsequent year.[806] The total paperwork burden associated with submitting a request for a substituted compliance determination with respect to regulatory reporting and public dissemination will be approximately 1,120 hours, plus $1,120,000 for 14 estimated requests.[807] In the Regulation SBSR Adopting Release, the Commission estimated that it would receive ten requests in the first year resulting in an aggregated burden for the first year of 800 hours, plus $800,000 for the services of outside professionals.[808] The Commission further estimates that it would receive two requests in each subsequent year resulting in an aggregate annual burden, after the first year, of up to 160 hours of company time and $160,000 for the services of outside professionals.[809]

2. Rule 908—Amendments

The Commission today is adopting amendments to Rule 908(a) to subject additional types of security-based swap transactions to regulatory reporting and public dissemination under

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805 See 80 FR at 14686.

806 See id.

807 See id. at 14687.

808 See id.

809 See id.

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

3. Rule 908—Aggregate Total Burdens and Costs

Because the only part of Rule 908 that imposes any paperwork burdens is paragraph (c), the Commission's estimate from the Regulation SBSR Adopting Release of the total paperwork burden associated with Rule 908(c) remains approximately 1,120 hours, plus $1,120,000 for 14 substituted compliance requests.[810] The Commission continues to believe that the first-year aggregated burden will be 800 hours, plus $800,000 for the services of outside professionals, and that the aggregate burden for each year following the first year will be up to 160 hours of company time and $160,000 for the services of outside professionals.[811]

G. Additional PRA Discussion

1. Use of Information

The security-based swap transaction information that is required by the amendments to Regulation SBSR adopted herein will be used by registered SDRs, market participants, the Commission, and other relevant authorities. The information reported by respondents pursuant to the amendments to Regulation SBSR adopted herein will be used by registered SDRs to publicly disseminate reports of security-based swap transactions, as well as to offer a resource for the Commission and other relevant authorities to obtain detailed information about the

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810 See id.

811 See id.

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

The policies and procedures required under the amendments to Regulation SBSR will be used by participants to aid in their compliance with Regulation SBSR, and also used by the Commission as part of its ongoing efforts to monitor and enforce compliance with the federal securities laws, including Regulation SBSR, through, among other things, examinations and inspections.

2. Recordkeeping Requirements

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

Security-based swap transaction information received by a registered SDR pursuant to Regulation SBSR is subject to Rule 13n-5(b)(4) under the Exchange Act,[812] which requires an SDR to maintain such information for not less than five years after the applicable security-based swap expires and historical positions for not less than five years. Rule 13n-7(b) under the Exchange Act[813] requires the SDR to keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Exchange Act and the rules

812 17 CFR 240.13n-5(b)(4).

813 17 CFR 240.13n-7(b).

or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available to representatives of the Commission for inspection and examination. The Commission does not believe that the amendments to Regulation SBSR adopted herein will have any impact on the PRA burdens of registered SDRs related to recordkeeping as they were already accounted for in the SDR Adopting Release.[814]

The Commission has proposed recordkeeping requirements for registered clearing agencies[815] and SB SEFs.[816] The amendments to Regulation SBSR adopted herein do not impose any recordkeeping requirements on registered clearing agencies or platforms.

3. Collection of Information is Mandatory

Each collection of information discussed above is mandatory.

4. Confidentiality of Responses to Collection of Information

An SDR, pursuant to Section 13(n)(5)(F) of the Exchange Act[817] and Rules 13n-4(b)(8) and 13n-9 thereunder,[818] is required to maintain the privacy of the security-based swap transaction information that it receives. For the majority of security-based swap transactions, the information collected pursuant to Rule 901(c) by a registered SDR will be publicly disseminated. Furthermore, to the extent that information previously reported and publicly disseminated is corrected, such information also will be widely available. However, certain security-based

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814 See 80 FR at 14523-24 (discussing the burdens associated with the recordkeeping requirements of Rules 13n-5(b)(4) and 13n-7(b)).

815 See Securities Exchange Act Release No. 64017 (March 3, 2011), 76 FR 14472 (March 16, 2011) ("Clearing Agency Standards for Operation and Governance Proposing Release").

816 See Securities Exchange Act Release No. 63825 (February 2, 2011), 76 FR 10948 (February 29, 2011) ("SB SEF Proposing Release").

817 15 U.S.C. 78m(n)(5)(F).

818 17 CFR 240.13n-4(b)(8) and 240.13n-9.

swaps are not subject to Rule 902's public dissemination requirement; therefore, information about these transactions will not be publicly available. For all security-based swaps, the information collected pursuant to Rule 901(d) is for regulatory purposes and will not generally be available to the public, although the Commission or Commission staff may make available statistics or aggregated data derived from these transaction reports. To the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential, subject to the provisions of applicable law.

XII. Economic Analysis

The Dodd-Frank Act amended the Exchange Act, among other things, to require regulatory reporting and public dissemination of security-based swap transactions. Regulation SBSR, which the Commission adopted in February 2015, implements this mandate. At the same time that it adopted Regulation SBSR, the Commission proposed additional rules and guidance to address issues that were not resolved in the Regulation SBSR Adopting Release.[819] Later, in April 2015, the Commission issued the U.S. Activity Proposal, which (among other things) proposed further amendments to Regulation SBSR to address the reporting and public dissemination of additional types of cross-border security-based swaps.[820] In this release, the Commission is adopting, with certain revisions, the amendments to Regulation SBSR contained in the Regulation SBSR Proposed Amendments Release and the U.S. Activity Proposal.

The Commission is sensitive to the economic consequences and effects, including costs and benefits, of its rules. Some of these costs and benefits stem from statutory mandates, while others are affected by the discretion exercised in implementing these mandates. The following

819 See supra note 6.

820 See supra note 7.

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

A. Programmatic Costs of Amendments to Regulation SBSR

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

1. Programmatic Costs of Newly Adopted Requirements

New Rule 901(a)(2)(i) provides that the reporting side for a clearing transaction is the registered clearing agency that is a direct counterparty to the clearing transaction, and allows the registered clearing agency to select the SDR. New Rule 901(a)(3) requires any person that has a duty to report a security-based swap that has been submitted to clearing at a registered clearing agency to promptly provide that registered clearing agency with the transaction ID of the submitted security-based swap and the identity of the registered SDR to which the transaction will be reported or has been reported. These amendments to Rule 901 will impose initial and ongoing costs on platforms, registered clearing agencies, and reporting entities. These costs will be a function of the number of additional events reportable as a result of these amendments and the number of data elements required to be submitted for each additional reportable event.[821]

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821 This release considers only the events that must be reported as a result of the amendments to Rule 901 being adopted today. In the Regulation SBSR Adopting Release, the

a. For Platforms and Registered Clearing Agencies

The Commission believes that platforms and registered clearing agencies, when carrying out duties to report security-based swaps, will generally incur the same infrastructure costs that reporting sides face. Like a reporting side, a platform or registered clearing agency must: (1) develop a transaction processing system; (2) implement a reporting mechanism; and (3) establish an appropriate compliance program and support for the operation of the transaction processing system.[822] Once platforms and registered clearing agencies have established the infrastructure to report security-based swap transactions, reportable events will be reported through electronic means and the marginal cost of reporting an additional transaction once the infrastructure to support the reporting function has been established should be de minimis. The Commission continues to estimate that there will be ten platforms and four registered clearing agencies that will incur duties to report security-based swap transactions under the amendments to Rule 901 adopted herein.

For platforms, the costs of reporting infrastructure consist of start-up costs in the first year and ongoing costs each year thereafter. For each platform, the estimated start-up costs include: (1) $102,000 for the initial set-up of the reporting infrastructure to carry out duties under Rule 901;[823] (2) $200,000 for establishing connectivity to a registered SDR;[824] (3) $49,000

Commission estimated the number of reportable events that will result from the rules adopted in that release and the associated costs. See generally 80 FR at 14700-704.

822 See id. at 14701.

823 This estimate is based on the following: [((Sr. Programmer (160 hours) at $303 per hour) + (Sr. Systems Analyst (160 hours) at $260 per hour) + (Compliance Manager (10 hours) at $283 per hour) + (Director of Compliance (5 hours) at $446 per hour) + (Compliance Attorney (20 hours) at $334 per hour))] = approximately $102,000 per platform. All hourly cost figures are based upon data from SIFMA's Management & Professional Earnings in the Securities Industry 2013 (modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee

for developing, testing, and supporting a reporting mechanism for security-based swap transactions;[825] (4) $77,000 for order management costs;[826] (5) $1,000 for data storage costs;[827] (6) $54,000 for designing and implementing an appropriate compliance and support program;[828] and (7) $38,500 for maintaining the compliance and support program.[829] Therefore, the

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benefits, and overhead). See also Regulation SBSR Proposed Amendments Release, 80 FR at 14775-76.

824 The Commission derived the total estimated expense from the following: ($100,000 hardware- and software related expenses, including necessary backup and redundancy, per SDR connection) × (2 SDR connections per platform) = $200,000 per platform. See also Regulation SBSR Proposed Amendments Release, 80 FR at 14776.

825 This figure is calculated as follows: [((Sr. Programmer (80 hours) at $303 per hour) + (Sr. Systems Analyst (80 hours) at $260 per hour) + (Compliance Manager (5 hours) at $283 per hour) + (Director of Compliance (2 hours) at $446 per hour) + (Compliance Attorney (5 hours) at $334 per hour))] = approximately $49,000 per platform. See also Regulation SBSR Proposed Amendments Release, 80 FR at 14776.

826 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)))] = approximately $77,000 per platform. See also Regulation SBSR Proposed Amendments Release, 80 FR at 14776.

827 This estimate is calculated as follows: [$250/gigabyte of storage capacity x (4 gigabytes of storage)] = $1,000 per platform. See also Regulation SBSR Proposed Amendments Release, 80 FR at 14776.

828 This figure 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)] = approximately $54,000 per platform. See also Regulation SBSR Proposed Amendments Release, 80 FR at 14776.

829 This figure 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)] = approximately $38,500 per platform. See also Regulation SBSR Proposed Amendments Release, 80 FR at 14776.

Commission estimates total start-up costs of $521,500 per platform and $5,215,000 for all platforms.[830]

The Commission estimates that the amendments to Rule 901 being adopted today also will require each platform to incur the following ongoing costs: (1) $200,000 for maintaining connectivity to a registered SDR;[831] (2) $77,000 for order management costs; (3) $1,000 for data storage costs; and (4) $38,500 for maintaining its compliance and support program. Therefore, the total estimated ongoing cost per year is $316,500 per platform, and $3,165,000 for all platforms.[832]

The Commission estimates that a registered clearing agency will have the same reporting infrastructure cost components as a platform, except that the costs to a registered clearing agency will be marginally higher because Rule 901(e)(1)(ii), as adopted herein, imposes a burden on registered clearing agencies that does not apply to platforms.[833] Although a registered clearing agency might not otherwise establish connectivity to an alpha SDR, the registered clearing agency will have to establish connectivity to alpha SDRs to comply with new Rule 901(e)(1)(ii).

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830 For each platform, the start-up cost is obtained by summing up its components = $102,000 + $200,000 + $49,000 + $77,000 + $1,000 + $54,000 + $38,500 = $521,500. The start-up cost for all platforms = 10 platforms x $521,500 = $5,215,000.

831 For each platform, the Commission estimates the cost of maintaining connectivity to an SDR to be the same as the cost of establishing connectivity to a registered SDR.

832 For each platform, the on-going cost per year is obtained by summing up its components = $200,000 + $77,000 + $1,000 + $38,500 = $316,500. The ongoing cost per year for all platforms = 10 platforms x $316,500 = $3,165,000.

833 Rule 901(e)(1)(ii) requires a registered clearing agency to report whether or not it has accepted an alpha for clearing to the alpha SDR. See supra Section III(G).

Accordingly, the Commission estimates that each registered clearing agency will connect to four registered SDRs.[834]

For each registered clearing agency, the estimated start-up costs consist of: (1) $102,000 for the initial setting-up of the reporting infrastructure to carry out duties under Rule 901; (2) $400,000 for establishing connectivity to a registered SDR;[835] (3) $49,000 for developing, testing, and supporting a reporting mechanism for security-based swap transactions; (4) $77,000 for order management costs; (5) $1,000 for data storage costs; (6) $54,000 for designing and implementing an appropriate compliance and support program; and (7) $38,500 for maintaining its compliance and support program. Therefore, the total estimated start-up cost is $721,500 per registered clearing agency and $2,886,000 in aggregate for all registered clearing agencies.[836]

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834 Cf. supra Section XII(A)(1)(a) (estimating that each platform will connect to only two registered SDRs).

835 The Commission derived the total estimated expense for registered clearing agencies as ($100,000 hardware- and software-related expenses, including necessary backup and redundancy, per SDR connection) x (4 SDR connections per registered clearing agency) = $400,000 per registered clearing agency. See Regulation SBSR Proposed Amendments Release, 80 FR at 14776 (estimating the hardware- and software-related expenses per SDR connection at $100,000).

836 For each registered clearing agency, the start-up cost is obtained by summing up its components = $102,000 + $400,000 + $49,000 + $77,000 + $1,000 + $54,000 + $38,500 = $683,000. The start-up cost for all registered clearing agencies = 4 registered clearing agencies x $721,500 = $2,886,000. These figures represent an estimate of the costs to a registered clearing agency to be fully onboarded with a registered SDR to allow reporting of all of the primary and secondary trade information associated with security-based swaps, as reporting sides are required to report. To the extent that a registered clearing agency must report to a registered SDR only alpha clearing dispositions and not entire transaction reports, the cost incurred by the clearing agency to carry out such reporting could be less. Regulation SBSR does not require full onboarding with an alpha SDR to report the limited number of data elements necessary to convey whether or not the clearing agency has accepted a particular alpha for clearing.

For each registered clearing agency, the ongoing estimated annual costs consist of: (1) $400,000 for maintaining connectivity to a registered SDR;[837] (2) $77,000 for order management costs; (3) $1,000 for data storage costs; and (4) $38,500 for maintaining its compliance and support program. Therefore, the Commission estimates the ongoing cost per year as $516,500 per registered clearing agency and $2,066,000 for all registered clearing agencies.[838]

The Commission previously estimated, using available transaction data from TIW, that there will be approximately 3 million transaction events per year related to security-based swaps, including the execution of new transactions and various types of life cycle events.[839] The Commission also estimated that Rule 901(a), as adopted in the Regulation SBSR Adopting Release, will require approximately 2 million of those events to be reported under Regulation SBSR.[840] In the Regulation SBSR Proposed Amendments Release, the Commission further estimated that the proposed amendments to Rule 901 would subject another 1 million events to a reporting requirement. This estimate of 1 million reportable events included platform-executed security-based swaps that will be submitted to clearing, all clearing transactions, and all life cycle events associated with such transactions. Specifically, the Commission estimates that platforms will be responsible for the reporting of approximately 120,000 of the 1 million

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837 The Commission estimates that a registered clearing agency's cost of maintaining connectivity to an SDR is the same as the registered clearing agency's cost of establishing connectivity to an SDR.

838 The ongoing cost per year is obtained by summing up its components = $400,000 + $77,000 + $1,000 + $38,500 = $516,500. The ongoing cost per year for all registered clearing agencies = 4 registered clearing agencies x $516,500 = $2,066,000.

839 See Regulation SBSR Proposed Amendments Release, 80 FR at 14776.

840 See id.

additional reportable events per year.[841] Since a platform must report only the security-based swaps executed on the platform that will be submitted to clearing, the Commission estimates that essentially all 120,000 platform-executed alphas will be terminated. The Commission estimates that there will be approximately 760,000 reportable events per year that are clearing transactions or life cycle events associated with clearing transactions.[842]

The Commission estimates that platforms will be responsible for reporting approximately 120,000 security-based swaps per year, at an annual cost of approximately $45,300 or $4,530 per platform,[843] and that registered clearing agencies will be responsible for reporting approximately 760,000 reportable events at an annual cost of approximately $286,900 or $71,725 per registered clearing agency.[844] The Commission believes that all reportable events that will be reported by platforms and registered clearing agencies pursuant to the amendments to Rule 901(a) will be reported through electronic means.

In the Regulation SBSR Adopting Release, the Commission stated that, to the extent that security-based swaps become more standardized and trade more frequently on electronic

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841 See supra Section XI(B)(2)(b)(iv).

842 See id.

843 The Commission estimates: ((120,000 × 0.005 hours per transaction) / (10 platforms)) = 60 hours per platform, or 600 total hours. The Commission further estimates the total cost to be: [((Compliance Clerk (30 hours) at $64 per hour) + (Sr. Computer Operator (30 hours) at $87 per hour)) × (10 platforms)] = approximately $45,300, or $4,530 per platform. See also Regulation SBSR Proposed Amendments Release, 80 FR at 14777.

844 The Commission estimates: ((760,000 × 0.005 hours per transaction) / (4 registered clearing agencies)) = 950 hours per registered clearing agency, or 3,800 total hours. The Commission further estimates the total cost to be: [((Compliance Clerk (475 hours) at $64 per hour) + (Sr. Computer Operator (475 hours) at $87 per hour)) × (4 registered clearing agencies)] = $286,900, or $71,725 per registered clearing agency. See also Regulation SBSR Proposed Amendments Release, 80 FR at 14777, which estimates the time taken to process a transaction at 0.005 hours, the hourly rate of a Compliance Clerk at $64 per hour, and the hourly rate of a Sr. Computer Operator at $87 per hour.

platforms (rather than manually), the act of reporting transactions to a registered SDR should become less costly.[845] Together, these trends are likely to reduce the number of transactions that necessitate the manual capture of bespoke data elements, which is likely to take more time and be more expensive than electronic capture of standardized transactions. New Rules 901(a)(1) and 901(a)(2)(i), respectively, assign reporting duties to clearing transactions and platform-executed security-based swaps that will be submitted to clearing. To the extent that registered clearing agencies make standardized security-based swaps available for clearing and platforms make standardized security-based swaps available for trading, the reporting of transactions covered by Rules 901(a)(1) and 901(a)(2)(i) should be less costly on average than the reporting of bespoke security-based swaps.

One commenter argued that the incremental costs of assigning the reporting obligation to the alpha reporting side would be small compared to the costs associated with registered clearing agencies incurring the reporting duty and having to establish connectivity to alpha SDRs.[846] The Commission estimates that a registered clearing agency will connect to four registered SDRs as a result of Rule 901(e)(1)(ii),[847] but that, in the absence of this rule, a registered clearing agency, like a platform, would connect to only two registered SDRs.[848] Thus, the Commission estimates that a registered clearing agency has to connect to two additional alpha SDRs as a result of new Rule 901(e)(1)(ii). The estimated cost of establishing connectivity to two SDRs is $200,000, and

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845 See 80 FR at 14703.

846 See supra Section III(G).

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

848 See id.

the estimated annual cost of maintaining connectivity to two SDRs is $200,000.[849] The estimated aggregate cost of establishing connectivity to alpha SDRs is $800,000, and the estimated aggregate annual cost of maintaining connectivity to alpha SDRs is $800,000. The Commission estimates that the costs to the alpha reporting side of reporting the initial alpha transaction are an upper bound estimate of the costs of assigning the duty to report clearing dispositions of alphas to the alpha reporting side.[850] To estimate the costs to the alpha reporting side of reporting the initial alpha transaction, the Commission assumes that the total annual number of platform-executed alpha transactions that will be submitted for clearing is 120,000.[851] The Commission estimates the costs to the alpha reporting sides of reporting the initial alpha transactions to be the same as the platforms' costs of reporting the 120,000 platform-executed alpha transactions. Thus, the aggregate reporting costs are approximately $45,300 per year,[852]

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849 The cost of establishing SDR connectivity is estimated as ($100,000 hardware- and software-related expenses, including necessary backup and redundancy, per SDR connection) x (2 SDR connections per registered clearing agency) = $200,000 per registered clearing agency. See also Regulation SBSR Adopting Release, 80 FR at 14701. The Commission estimates that a registered clearing agency's cost of maintaining connectivity to two alpha SDRs is the same as the registered clearing agency's cost of establishing connectivity to two alpha SDRs. These costs do not represent new compliance costs. They are part of the start-up and ongoing costs incurred by a registered clearing agency to comply with the amendments to Rule 901 adopted today and discussed in Section XII(A)(1)(a), supra. The estimated aggregate cost of establishing connectivity to alpha SDRs is ($200,000 alpha SDR connectivity cost per registered clearing agency) x (4 registered clearing agencies) = $800,000. The estimated aggregate annual cost of maintaining connectivity to alpha SDRs is ($200,000 alpha SDR connectivity maintenance cost per registered clearing agency) x (4 registered clearing agencies) = $800,000.

850 The costs of reporting the initial alpha trade form an upper bound estimate because the initial alpha trade report likely requires more data elements to be captured and transmitted than would a report of whether the alpha trade has been accepted for clearing.

851 See supra Section XII(A)(1)(a).

852 See id.

which represent an upper bound estimate of the costs of assigning the reporting obligation to the alpha reporting side.

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

Moreover, the Commission's determination that the clearing agency to which the security-based swap is submitted for clearing should be required to report the disposition of the alpha rather than the alpha reporting side (or a platform, in the case of a platform-executed alpha) is designed to improve the integrity of information about cleared security-based swaps. The Commission believes that centralizing responsibility for reporting this information in a small number of registered clearing agencies rather than a larger number of alpha reporting sides and platforms minimizes the likelihood of orphan alphas. The adopted approach should facilitate the

ability of alpha SDRs to match clearing disposition reports with the original alpha transaction reports and help the Commission to obtain a more accurate view of the exposures of counterparties that intended to clear transactions. A more accurate view of the exposures of counterparties will enable the Commission to conduct robust monitoring of the security-based swap market for potential risks to financial markets and financial market participants.[853]

Furthermore, Rule 901(e)(1)(ii) is consistent with the Commission's approach of assigning the reporting obligation for a transaction to the person with the most complete and efficient access to the required information at the point of creation. The registered clearing agency determines whether to accept an alpha for clearing and controls the precise moment when the transaction is cleared; the Commission believes, therefore, that the clearing agency is best placed to report the result of its decision. If the alpha reporting side were required to report whether or not the alpha has been accepted for clearing, it would first need to learn this information from the registered clearing agency.[854] As the Commission noted in Section III(B), supra, a rule that required reporting by a person who lacks direct access, at the time of creation, to the information that must be reported would increase the risks of data discrepancies, errors, or delays. Accordingly, for the same reasons that the Commission is assigning to registered clearing agencies the duty to report all clearing transactions, the Commission also believes that it is more efficient to require a registered clearing agency to report to the alpha SDR whether or not the clearing agency has accepted the alpha for clearing.

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853 See Regulation SBSR Adopting Release 80 FR at 14700.

854 The commenter who advocated that the duty to report whether or not the transaction has been accepted for clearing should be given to the reporting side of the alpha acknowledged that the alpha reporting side must rely on the clearing agency to provide information about the disposition of any transaction submitted to clearing. See LCH.Clearnet Letter at 9-10.

b. For Platforms and Reporting Sides of Alphas

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

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

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

be $1,689 per reporting person.[855] The Commission believes that the additional ongoing cost related to the development of the ability to capture the relevant transaction information will be $2,815 per reporting person and the additional ongoing burden related to the maintenance of the reporting mechanism will be $563 per reporting person.[856]

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

Summing these costs[857], the Commission estimates that the initial, first-year costs of complying with the amendments to Rule 901 (including the initial reporting and the reporting of any life cycle events) will be $5,260,300, which corresponds to $526,030 per platform.[858] The Commission estimates that the ongoing aggregate annual costs, after the first year, of complying

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855 The Commission estimates the cost of developing the ability to capture the alpha's transaction ID and the alpha SDR as: [(Sr. Programmer (5 hours at $303 per hour) + Sr. Systems Analyst (5 hours) at $260 per hour) = $2,815 per platform or reporting side. The Commission estimates the cost of implementing the reporting mechanism as: (Sr. Programmer (3 hours) at $303 per hour + Sr. Systems Analyst (3 hours) at $260 per hour) = $1,689 per platform or reporting side.

856 The Commission estimates the additional ongoing development cost as (Sr. Programmer (5 hours at $303 per hour) + Sr. Systems Analyst (5 hours at $260 per hour)) = $2,815 per platform or reporting side. The Commission estimates the ongoing maintenance cost as (Sr. Programmer (1 hour at $303 per hour) + Sr. Systems Analyst (1 hour at $260 per hour)) = $563 per platform or reporting side.

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

858 This estimate is based on the following: (($102,000 + $200,000 + $49,000 +$77,000 + $54,000 + $1,000 + $38,500 + $4,530) x (10 platforms)) = $5,260,300 which corresponds to $526,030 per platform.

with the amendments to Rule 901 (including the initial reporting and the reporting of any life cycle events) will be $3,210,300, which corresponds to $321,030 per platform.[859]

For registered clearing agencies, the Commission estimates that the initial, first-year costs of complying with the amendments to Rule 901 (including the initial reporting and the reporting of any life cycle events) will be $3,172,900, which corresponds to $793,225 per registered clearing agency.[860] The Commission estimates that the ongoing aggregate annual costs, after the first year, of complying with the amendments to Rule 901 (including the initial reporting and the reporting of any life cycle events) will be $2,352,900, which corresponds to $588,225 per registered clearing agency.[861]

For compliance with new Rule 901(a)(3), the Commission estimates that the initial, first-year costs of complying will be $1,396,240, which corresponds to $4,504 per respondent.[862] The Commission estimates that the ongoing aggregate annual costs, after the first year, of complying with Rule 901(a)(3) will be $1,047,180, which corresponds to $3,378 per respondent.[863]

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

860 This estimate is based on the following: (($102,000 + $400,000 + $49,000 +$77,000 + $54,000 + $1,000 + $38,500 +$71,725) x (4 registered clearing agencies)) = $3,172,900, which corresponds to $793,225 per registered clearing agency.

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

862 This estimate is based on the following: ($2,815 + $1,689) x 310 (300 reporting sides + 10 platforms)) = $1,396,240, which corresponds to $4,504 per respondent. In the Regulation SBSR Proposed Amendments Release, the estimate only included the one-time cost related to the development of the ability to capture the relevant transaction information ($2,815). The estimation has been revised to also include the one-time cost of implementing a reporting mechanism for the transaction information ($1,689).

863 This estimate is based on the following: (($2,815 + $563) x 310 (300 reporting sides + 10 platforms)) = $1,047,180, or $3,378 per respondent. In the Regulation SBSR Proposed Amendments Release, the estimate only included the ongoing cost related to

d. Reporting by Unregistered Persons

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

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

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

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the development of the ability to capture the relevant transaction information ($2,815). The estimation has been revised to also include the ongoing cost of implementing a reporting mechanism for the transaction information ($563).

[864] While Rules 901(a)(2)(ii)(E)(2)-(3) admit the possibility that some of these unregistered persons are U.S. persons, the Commission does not expect unregistered U.S. persons to be responsible for reporting a significant amount of additional transaction under Rules 901(a)(2)(ii)(E)(2)-(3). In current market practice, larger, more sophisticated participants assume reporting duties. As a result, in cases where an unregistered U.S. person and a non-U.S. person engaged in dealing activity in the United States select the reporting side,

In the Regulation SBSR Adopting Release,[865] the Commission estimated that 300 respondents will incur reporting duties under Regulation SBSR, of which 50 are likely to register as security-based swap dealers and five are likely to register as major security-based swap market participants. Unregistered persons covered by new Rules 901(a)(2)(ii)(E)(2) and 901(a)(2)(ii)(E)(3) are already included in the remaining subset of 245 respondents that are not likely to register as security-based swap dealers or major security-based swap participants. Because the Commission had already accounted for the programmatic costs of building reporting infrastructure and reporting security-based swap transactions incurred by these 300 respondents in the Regulation SBSR Adopting Release,[866] Rules 901(a)(2)(ii)(E)(2) and 901(a)(2)(ii)(E)(3) will not result in additional programmatic costs associated with reporting infrastructure or transaction reporting. Two commenters noted that requiring the reporting of ANE transactions would place burdens on unregistered entities that do not have reporting infrastructure in place and would be compelled to engage third-party providers to report transactions.[867] The Commission acknowledges that the reporting of ANE transactions will place burdens on unregistered entities, but in only a limited number of cases. The Commission estimates that the initial aggregate annual costs associated with Rule 901 will be approximately $2,096,000, which corresponds to approximately $524,000 per unregistered entity.[868] The Commission estimates

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the reporting duty is likely to be assigned to the non-U.S. person. See supra Section IX(G)(2)(a).

865 See 80 FR at 14674.

866 See id. at 14701-702.

867 See ISDA I at 11; SIFMA/FSR Letter at 13.

868 The initial cost estimates are based on the following: $524,000 x 4 unregistered entities = $2,096,000, which corresponds to $524,000 per unregistered entity. See Regulation SBSR Adopting Release, 80 FR at 14702. The four unregistered entities are the estimated number of unregistered foreign dealing entities that will engage in ANE

that the ongoing aggregate annual costs associated with Rule 901 will be approximately $1,276,000, which corresponds to approximately $319,000 per unregistered entity.[869] As discussed earlier, these programmatic costs are part of the programmatic costs associated with Rule 901 that were accounted for in the Regulation SBSR Adopting Release. Unregistered foreign dealing entities could fulfil their reporting obligations by incurring the programmatic costs of building reporting infrastructure and reporting security-based swap transactions. Alternatively, these entities could engage with third-party service providers to carry out any reporting duties incurred under Regulation SBSR.[870] The Commission disagrees with the commenters that unregistered entities would use third-party service providers without considering alternatives. Though the Commission does not have specific information on the pricing of third-party reporting services on which to base estimates of the cost of engaging third-parties to provide reporting services, the Commission notes that unregistered entities will likely choose the method of compliance that they deem to be most cost efficient. Thus, the Commission assumes that unregistered entities would engage third-party service providers only if they provide services at costs less than the programmatic costs of Rule 901 estimated above.

Under new Rule 901(a)(2)(ii)(E)(4), a registered broker-dealer would incur the duty to report a security-based swap that is effected by or through that broker-dealer only when neither

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activity. See supra Section II(A)(4)(d). The Commission assumes that unregistered U.S. persons that fall under Rules 901(a)(2)(ii)(E)(2) and (3) will not assume reporting duties. See supra Section IX(G)(2)(a).

869 The ongoing cost estimates are based on the following: $319,000 x 4 unregistered entities = $1,276,000, which corresponds to $319,000 per unregistered entity. See id. for a discussion of the assumptions underlying the calculations.

870 The Commission does not have data with which to estimate the costs of using third-party service providers to carry out reporting duties incurred under Regulation SBSR. The two commenters did not provide such cost estimates in their letters. See ISDA I at 11; SIFMA/FSR Letter at 13).

side includes a person that falls within Rule 908(b)(5). The Commission estimates that a maximum of 20 registered broker-dealers, excluding registered SB SEFs, will incur this reporting duty and will report 540 security-based swap transactions per year. Unlike the unregistered counterparties covered by Rules 901(a)(2)(ii)(E)(2) and (3), these 20 registered broker-dealers were not part of the 300 respondents the Commission estimated in the Regulation SBSR Adopting Release. Therefore, by subjecting the 20 registered broker-dealers to Regulation SBSR, new Rule 901(a)(2)(ii)(E)(4) adds new programmatic costs associated with reporting infrastructure.

The Commission estimated the costs of reporting on a per-entity basis in the Regulation SBSR Adopting Release and has no reason to believe that these per-entity costs are substantially different for different types of entities.[871] Therefore, the Commission is applying these per-entity costs to estimate the Rule 901 programmatic costs for the 20 registered broker-dealers.[872]

For a registered broker-dealer, the cost of reporting infrastructure consists of start-up cost in the first year and, thereafter, ongoing annual costs. For each registered broker-dealer, the start-up cost is broken down into: (1) $102,000 for the initial set-up of the reporting infrastructure to carry out duties under Rule 901; (2) $200,000 for establishing connectivity to a registered SDR; (3) $49,000 for developing, testing, and supporting a reporting mechanism for

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871 See id.

872 One commenter argued that Rule 901(a)(2)(ii)(E)(4) "would create a disproportionate burden on registered broker-dealers relative to the small percentage of the market that these transactions compromise." SIFMA/FSR Letter at 14. The Commission notes that many registered broker-dealers may already have order management systems in place to facilitate voluntary reporting of security-based swap transactions or clearing activity. As a result, any additional costs related to systems and infrastructure will be limited to those broker-dealers that either invest in new systems or must upgrade existing systems to meet minimum requirements for reporting. To the extent that the cost estimates discussed here do not take this cost limiting fact into account, they are an upper bound for the estimated costs. See Regulation SBSR Adopting Release, 80 FR at 14701.

security-based swap transactions; (4) $77,000 for order management costs; (5) $1,000 for data storage costs; (6) $54,000 for designing and implementing an appropriate compliance and support program; and (7) $38,500 for maintaining the compliance and support program.[873] Therefore, the total start-up cost is $521,500 per registered broker-dealer and $10,430,000 in aggregate, across all registered broker-dealers.[874]

For each registered broker-dealer, the ongoing annual cost consists of: (1) $200,000 for maintaining connectivity to a registered SDR;[875] (2) $77,000 for order management costs; (3) $1,000 for data storage costs; and (4) $38,500 for maintaining its compliance and support program. Therefore, the ongoing cost per year is $316,500 per registered broker-dealer, and $6,330,000 for all registered broker-dealers.[876] In the Regulation SBSR Adopting Release,[877] the Commission estimated that there will be 3 million reportable events per year under Rule 901. Of the 3 million events, 2 million are not clearing transactions. The transactions that will be reported by registered broker-dealers as a result of new Rule 901(a)(2)(ii)(E)(4) were assessed by the Commission as part of the 2 million non-clearing transactions. The Commission already accounted for the cost of reporting the 2 million non-clearing transactions in the Regulation SBSR Adopting Release.

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873 See supra Section XII(A)(1)(a).

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

875 See supra Section XII(A)(1)(a).

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

877 See Regulation SBSR Adopting Release, 80 FR at 14676.

2. Amendments to Rule 905(a)

The amendments to Rule 905(a) adopted herein provide that any counterparty or other person having a duty to report a security-based swap that discovers an error in information previously reported pursuant to Regulation SBSR must correct such error in accordance with the procedures laid out in Rule 905(a). As the Commission noted in the Regulation SBSR Adopting Release, requiring participants to promptly correct erroneous transaction information should help ensure that the Commission and other relevant authorities have an accurate view of the risks in the security-based swap market.

In the Regulation SBSR Adopting Release, the Commission estimated that Rule 905(a) will impose an initial, one-time burden associated with designing and building a reporting side's reporting system to be capable of submitting amended security-based swap transaction information to a registered SDR.[878] The Commission stated its belief that designing and building appropriate reporting system functionality to comply with Rule 905(a)(2) will be a component of, and represent an incremental "add-on" to, the cost to build a reporting system and develop a compliance function as required under Rule 901.[879] Specifically, the Commission estimated that, based on discussions with industry participants, the incremental burden will 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.[880] This estimate was based on similar calculations contained in the Regulation SBSR

878 See 80 FR at 14714.

879 See id.

880 See id.

Proposing Release,[881] updated to reflect new estimates relating to the number of reportable events and the number of reporting sides.[882]

The Commission continues to believe that the above methodology is applicable to error reporting by platforms and registered clearing agencies under the amendment to Rule 905(a). Thus, for these new respondents, the Commission estimates that Rule 905(a) will impose an initial (first-year) aggregate cost of $165,550, or $11,825 per respondent,[883] and an ongoing aggregate annualized cost of $55,650, which is $3,975 per respondent.[884]

The Commission estimates that four unregistered foreign dealing entities will engage in ANE activity and incur a duty to report as a result of new Rules 901(a)(2)(ii)(E)(2)-(3).[885] These unregistered persons also will incur costs associated with error reporting under Rule 905. As noted in Section XII(A)(1)(d), supra, these unregistered persons are part of the subset of 300 respondents that were identified in the Regulation SBSR Adopting Release as not likely to register as security-based swap dealers or major security-based swap participants. Because the Commission already accounted for the programmatic costs of building and maintaining error

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881 See 75 FR at 75254.

882 See Regulation SBSR Adopting Release, 80 FR at 14701-702.

883 See Regulation SBSR Proposing Release, 75 FR at 75254-55. This figure is calculated as follows: [((($49,000 for one-time development of reporting system) x (0.05)) + (($2,500 annual maintenance of reporting system) x (0.05)) + (($54,000 one-time compliance program development) x (0.1)) + (($38,500 annual support of compliance program) x (0.1))) x 14 reporting entities (10 platforms + 4 registered clearing agencies)] = $165,550, which is $11,825 per platform or registered clearing agency.

884 See Regulation SBSR Proposing Release, 75 FR at 75254-55. This figure is calculated as follows: [(($2,500 annual maintenance of reporting system) x (0.05)) + (($38,500 annual support of compliance program) x (0.1))) x 14 reporting entities (10 platforms + 4 registered clearing agencies)] = $55,650, which is $3,975 per platform or registered clearing agency.

885 See supra Section II(A)(4)(d) for a discussion of how these dealing entities are identified in the TIW data.

reporting capabilities incurred by these 300 respondents in the Regulation SBSR Adopting Release,[886] the amendments to Rule 905(a) will not result in additional programmatic costs for the four unregistered persons.

The Commission estimates that 20 registered broker-dealers, excluding SB SEFs, will incur a duty to report security-based swap transactions because of new Rule 901(a)(2)(ii)(E)(4).[887] Thus, these registered broker-dealers are subject to the amendment to Rule 905(a) adopted herein and will incur costs associated with error reporting.

The Commission continues to believe that the cost estimation methodology previously applied in the Regulation SBSR Adopting Release is applicable to error reporting by registered broker-dealers.[888] Thus, for registered broker-dealers, the Commission estimates that the amendment to Rule 905(a) will impose an initial (first-year) aggregate cost of $236,500, or $11,825 per respondent,[889] and an ongoing aggregate annualized cost of $79,500, or $3,975 per respondent.[890]

Rule 905(a)(1) as amended herein states that, if a person that was not the reporting side for a security-based swap transaction discovers an error in the information reported with respect

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886 See 80 FR at 14714.

887 See supra Section XII(A)(1)(d).

888 See 80 FR at 14714.

889 See Regulation SBSR Proposing Release, 75 FR at 75254-55. This figure is calculated as follows: [(($49,000 for one-time development of reporting system) x (0.05)) + (($2,500 annual maintenance of reporting system) x (0.05)) + (($54,000 one-time compliance program development) x (0.1)) + (($38,500 annual support of compliance program) x (0.1))) x 20 registered broker-dealers] = $236,500, which is $11,825 per registered broker-dealer.

890 See Regulation SBSR Proposing Release, 75 FR at 75254-55. This figure is calculated as follows: [(($2,500 annual maintenance of reporting system) x (0.05)) + (($38,500 annual support of compliance program) x (0.1))) x 20 registered broker-dealers] = $79,500, which is $3,975 per registered broker-dealer.

to such security-based swap, that person shall promptly notify the person having the duty to report the security-based swap of the error. Clients of registered broker-dealers likely will incur costs, because Rule 905(a)(1) requires them to notify registered broker-dealers of errors in transaction reports made by the registered broker-dealers pursuant to Rule 901(a)(2)(ii)(E)(4). As stated in Section XII(A)(1)(d), supra, the Commission estimates that registered broker-dealers will incur the duty to report 540 security-based swap transactions per year under Rule 901(a)(2)(ii)(E)(4). Assuming that each of the 540 transactions is reported in error, the upper bound estimate of the annual cost associated with this obligation is approximately $17,280, which corresponds to roughly $576 per respondent.[891]

3. Amendments to Rule 906(c)

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

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[891] These figures are based on the assumption that approximately 540 additional security-based swap transactions per year will have to be reported by registered broker-dealers pursuant to Rule 901(a)(2)(ii)(E)(4), and that these trades involve 30 entities with reporting duties. Using cost estimated provided in the Regulation SBSR Adopting Release, if each trade is reported in error, then the aggregate annual cost of error notification is 540 errors x Compliance Clerk at $64 per hour x 0.5 hours per report = $17,280, or $576 per participant. See Regulation SBSR Adopting Release, 80 FR at 14714. Salary figures are taken from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for a 1,800-hour work-week and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

adopted herein extends these same requirements to participants of a registered SDR that are platforms, registered clearing agencies, and registered broker-dealers.

The Commission continues to believe that the cost estimation methodology previously applied in the Regulation SBSR Adopting Release is applicable to the adoption and maintenance of policies and procedures.[892] Thus, for registered clearing agencies and platforms, the Commission estimates that the amendments to Rule 906(c) will impose an initial (first-year) aggregate cost of $1,288,000, or $92,000 per registered clearing agency or platform,[893] and an ongoing aggregate annualized cost of $476,000, or $34,000 per registered clearing agency or platform.[894] In addition, for registered broker-dealers likely to become participants solely as a result of making a report to satisfy an obligation under Rule 901(a)(2)(ii)(E)(4) (a "respondent broker-dealer"), the Commission estimates that the amendments to Rule 906(c) will impose an initial (first-year) aggregate cost of $1,840,000, or $92,000 per respondent broker-dealer,[895] and an ongoing aggregate annualized cost of $680,000, or $34,000 per respondent broker-dealer.[896]

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892 See Regulation SBSR Adopting Release, 80 FR at 14716.

893 See id. This figure is based on the following: [(($58,000 for one time developing of written policies and procedures) + ($34,000 for annual updates to policies and procedures)) x 14 registered clearing agencies and platforms] = $1,288,000, which is $92,000 per registered clearing agency or platform.

894 See Regulation SBSR Adopting Release, 80 FR at 14716. This figure is based on the following: [($34,000 for annual updates to policies and procedures) x 14 registered clearing agencies and platforms] = $476,000, which is $34,000 per registered clearing agency or platform.

895 See Regulation SBSR Adopting Release, 80 FR at 14716. This figure is based on the following: [(($58,000 for one time developing of written policies and procedures) + ($34,000 for annual updates to policies and procedures)) x 20 respondent broker-dealers] = $1,840,000, which is $92,000 per respondent broker-dealer.

896 See Regulation SBSR Adopting Release, 80 FR at 14716. This figure is based on the following: [($34,000 for annual updates to policies and procedures) x 20 respondent broker-dealers] = $680,000, which is $34,000 per respondent broker-dealer.

The Commission does not believe that the amendments to Rule 906(c) will impose any economic costs beyond the paperwork burdens described herein and in Section XI(D)(2)(c), supra.

4. Amendments That Subject Additional Cross-Border Security-Based Swaps to Regulation SBSR

a. ANE Transactions Involving Unregistered Entities

New Rule 908(a)(1)(v) provides that any security-based swap transaction connected with a non-U.S. person's security-based swap dealing activity that is arranged, negotiated, or executed by U.S. personnel is subject to regulatory reporting and public dissemination under Regulation SBSR.

Several commenters expressed concern about the complexities and expense of implementing the adopted rules.[897] One commenter stated there would be significant costs associated with reporting because market participants that have already designed and implemented reporting systems based on the CFTC's cross-border guidance and the rules of other jurisdictions would need to modify their systems to comply with the Commission's proposed rules.[898]

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897 See IIB Letter at 16 (stating that regulatory reporting of transactions where neither reporting side includes a U.S. person, guaranteed affiliate, or registered security-based swap dealer would come with significant cost); ISDA I at 11 (stating that expanding the reporting requirements to non-U.S. trades would be burdensome and costly); SIFMA-AMG I at 2 (stating that requiring the reporting of transactions that were arranged, negotiated or executed in the United States would increase the transactional burdens on "an already taxed system"); SIFMA/FSR Letter at 12 (taking the view that monitoring for conduct in the United States and building the infrastructure needed for reporting based purely on conduct will be an unnecessary expense for security-based swap market participants since the information being added to the public dissemination stream would not be informative or could give a distorted view of market prices and would result in data at SDRs that has minimal U.S. nexus).

898 See IIB Letter at 16. The commenter stated that, to modify its systems in connection with the U.S. personnel test, a non-U.S. dealing entity (including one operating below the de minimis threshold) "would need to install or modify a trade capture system capable of

The Commission agrees that market participants will incur costs to comply with the reporting requirements of Rule 908(a)(1)(v). However, the Commission notes that all ANE transactions where a U.S. person is on one side as either a direct or indirect counterparty are already subject to regulatory reporting under the rules adopted in the Regulation SBSR Adopting Release. Thus, only a small number of ANE transactions—which the Commission estimates will result in at most 1,080 reportable events per year—will be subject to regulatory reporting as a result of new Rule 908(a)(1)(v); accordingly, the attendant costs of complying with Rule 908(a)(1)(v) will also be relatively small. The Commission understands that market participants may have to incur costs to modify their existing reporting systems to comply with the Commission's rules.[899] However, to the extent that these rules and rules in other jurisdictions require the collection of the same or similar information, the system modification costs will be minimized.[900]

The Commission believes that the reporting and public dissemination of all ANE transactions will provide benefits to the Commission and relevant authorities and to market participants. The Commission also believes that requiring the public dissemination of these

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tracking, on a dynamic, trade-by-trade basis, the location of front-office personnel. The non-U.S. SBSD would then need to feed that data into its reporting system and re-code that system to account for the different rules that apply to non-U.S. SBS depending on whether they are arranged, negotiated or executed by U.S. personnel. The non-U.S. SBSD would also need to train its front office personnel in the use of this new trade capture system and develop policies, procedures, and controls to require, track, and test the proper use of that system. In addition, the non-U.S. SBSD would need to seek and obtain waivers from non-U.S. counterparties—to the extent such waivers are even permitted—with respect to privacy, blocking and secrecy laws in local jurisdictions." Id. In the U.S. Activity Adopting Release, the Commission addressed generally the costs that firms would incur as a result of firms having to register as security-based swap dealers. See 81 FR at 8629-31.

899 See IIB Letter at 16.

900 See supra Section II(A)(6).

transactions could help to increase price competition and price efficiency in the security-based swap market and enable all market participants to have more comprehensive information with which to make trading and valuation determinations. Publicly disseminating these transactions also could reduce implicit transaction costs.[901] In addition, the amendments being adopted today reflect the Commission's assessment of the impact that the scope of security-based swap transactions subject to regulatory reporting may have on the ability of the Commission and other relevant authorities to detect emerging risks and abusive trading in the security-based swap market. Regulatory reporting of these transactions to a registered SDR should enhance the Commission's ability to oversee relevant activity related to security-based swap dealing occurring within the United States as well as to monitor market participants for compliance with specific Title VII requirements (including the requirement that a person register with the Commission as a security-based swap dealer if it exceeds the de minimis threshold).[902] The reporting of these transactions also will enhance the Commission's ability to monitor manipulative and abusive practices involving security-based swap transactions or transactions in related underlying assets, such as corporate bonds or other securities transactions that result from dealing activity, or other relevant activity, in the U.S. market.[903]

b. Transactions Executed on a Platform or By or Through a Registered Broker-Dealer

New Rule 908(a)(1)(iii) requires any security-based swap transaction that is executed on a platform having its principal place of business in the United States both to be reported to a registered SDR and to be publicly disseminated pursuant to Regulation SBSR. New Rule

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901 See U.S. Activity Proposal, 80 FR at 27483-84.

902 See id. at 27483.

903 See id.

908(a)(1)(iv) requires the reporting and public dissemination of any security-based swap transaction that is effected by or through a registered broker-dealer (including a registered SB SEF). The Commission notes that many security-based swaps that are executed on platforms or by or through a registered broker-dealer are already subject to Regulation SBSR because they meet one or both prongs of existing Rule 908(a)(1)—i.e., there is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction or the security-based swap is accepted for clearing by a clearing agency having its principal place of business in the United States.[904] Thus, new Rules 908(a)(1)(iii) and (iv) extend regulatory reporting and public dissemination to an additional number of uncleared security-based swaps: those involving only non-U.S. persons. The costs of reporting these additional cross-border security-based swaps are considered in the Commission's analysis of the amendments to Rule 901(a)(2)(ii)(E), which assigns the duty to report those cross-border security-based swaps.[905] Thus, new Rules 908(a)(1)(iii) and (iv) do not independently impose any additional reporting costs.

One commenter suggested that new Rule 908(a)(1)(iv) could provide incentives for non-U.S. counterparties to avoid transacting through registered broker-dealers, resulting in market fragmentation that would lead to adverse effects on risk management, market liquidity, and U.S. jobs.[906] The Commission acknowledges that market fragmentation could result if non-U.S. counterparties avoid transacting through registered broker-dealers. However, as discussed above, because of the small number of security-based swaps that are subject to Rule

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904 See Rule 908(a)(2) (stating that a security-based swap that is not included within Rule 908(a)(1) shall be subject to regulatory reporting but not public dissemination if there is a direct or indirect counterparty on either or both sides of the transaction that is a registered security-based swap dealer or a registered major security-based swap participant).

905 See supra Section XII(A)(1).

906 See IIB Letter at 16-17.

908(a)(1)(iv), any market fragmentation due to the avoidance of registered broker-dealers by non-U.S. counterparties would be limited. To the extent that adverse effects on risk management, market liquidity, and U.S. jobs flow from market fragmentation, the Commission does not believe these effects should be significant, given the limited fragmentation that will likely arise as a result of the rule.

5. Amendments to Rule 908(b)

Rule 908(b) clarifies the types of persons that can incur duties under Regulation SBSR. In the Regulation SBSR Proposed Amendments Release, the Commission proposed to amend Rule 908(b) by adding platforms and registered clearing agencies to the list of persons that might incur obligations under Regulation SBSR.[907] The Commission has adopted these changes to Rule 908(b), as discussed in Section IX(F)(1), supra.

The Commission also is adopting new Rule 908(b)(5) to include a non-U.S. person that, in connection with such person's security-based swap dealing activity, arranged, negotiated, or executed a security-based swap using U.S. personnel. Because existing Rule 908(b)(2) covers a non-U.S. person that is registered as a security-based swap dealer, the effect of new Rule 908(b)(5) is to cover a foreign dealing entity that engages in ANE activity but that does not meet the de minimis threshold and thus would not have to register as a security-based swap dealer.

The costs incurred by an unregistered non-U.S. person that falls under Rule 908(b)(5) include the costs of setting up reporting infrastructure and compliance systems, which have been discussed in connection with the adoption of new Rules 901(a)(2)(ii)(E)(2) and (3).[908] Once an unregistered non-U.S. person's reporting infrastructure and compliance systems are in place, the

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907 See 80 FR at 14759.

908 See supra Section XII(A)(1)(d).

marginal cost of reporting an individual transaction would be minimal[909] when compared to the costs of putting those systems in place and maintaining them over time.[910]

6. Other Conforming Amendments

As discussed in Section V(A), supra, the Commission today is adopting amendments to Rule 900(u) to expand the definition of "participant" to include platforms, registered clearing agencies that are required to report alpha dispositions pursuant to new Rule 901(e)(1)(ii), and registered broker-dealers that incur the duty to report security-based swap transactions pursuant to new Rule 901(a)(2)(ii)(E)(4).

Existing Rule 906(b) generally requires a participant of a registered SDR to provide the identity of its ultimate parent and any affiliates that also are participants of that registered SDR. In the Regulation SBSR Proposed Amendments Release, the Commission proposed to amend Rule 906(b) to except platforms and registered clearing agencies from this requirement. In the U.S. Activity Proposal, the Commission further proposed to amend Rule 906(b) to except from this requirement a registered broker-dealer that becomes a participant solely as a result of making a report to satisfy an obligation under Rule 901(a)(2)(ii)(E)(4). The Commission also proposed similar amendments to existing Rule 907(a)(6), which requires a registered SDR to have policies and procedures for periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, to avoid extending these policies and procedures to cover platforms, registered clearing agencies, and registered broker-dealers (assuming that they are not counterparties to security-based swap

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909 See infra Section XII(B)(1) (discussing the costs incurred by unregistered non-U.S. persons to assess whether they engage in ANE transactions and thus could incur reporting duties under Rule 901(a)(2)(ii)(E)).

910 See Regulation SBSR Adopting Release, 80 FR at 14702.

transactions). For the reasons discussed above,[911] the Commission is adopting these amendments. Accordingly, platforms, registered clearing agencies, and registered broker-dealers (assuming they are not counterparties to security-based swap transactions) will not incur costs to report ultimate parent and affiliate information and, registered SDRs will not incur costs to extend the scope of their policies and procedures.

Existing Rule 906(c) requires certain participants of a registered SDR to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that the participant complies with any obligations to report information to a registered SDR in a manner consistent with Regulation SBSR. Rule 906(c) also requires participants covered by the rule to review and update their policies and procedures at least annually. In the Regulation SBSR Proposed Amendments Release, the Commission proposed to amend Rule 906(c) by extending this requirement to platforms and registered clearing agencies. In the U.S. Activity Proposal, the Commission proposed to amend Rule 906(c) by extending this requirement to a registered broker-dealer that incurs reporting obligations solely because it effects transactions between two unregistered non-U.S. persons that do not fall within proposed Rule 908(b)(5). In this release, the Commission is adopting the amendments to Rule 906(c) as proposed.

The Commission continues to estimate that the cost associated with establishing such policies and procedures, for each covered participant, will be approximately $58,000 and the cost associated with annual updates will be approximately $34,000.[912] Accordingly, the Commission estimates that the initial aggregate annual cost associated with the amendments to Rule 906(c)

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911 See supra Sections V (excepting platforms and registered clearing agencies from Rule 906(b)) and IX (excepting registered broker-dealers from Rule 906(b) if they become participants solely as a result of making a report to satisfy an obligation under Rule 901(a)(2)(ii)(E)(4)).

912 See Regulation SBSR Adopting Release, 80 FR at 14716.

will be approximately $3,128,000, which corresponds to $92,000 per covered participant.[913] The Commission further estimates that the ongoing aggregate annual cost associated with the amendment Rule 906(c) will be approximately $1,156,000,[914] which corresponds to $34,000 per covered participant. The Commission believes that the costs imposed on participants by these amendments are necessary because written policies and procedures that are reasonably designed to ensure that covered participants comply with any obligations to report information to a registered SDR in a manner consistent with Regulation SBSR will enhance the overall reliability of security-based swap transaction data reported to registered SDRs.

Finally, existing Rule 901(d)(9) requires the reporting, if applicable, of the platform ID for a platform on which a security-based swap was executed. In the U.S. Activity Proposal, the Commission proposed to amend Rule 901(d)(9) to require the reporting, if applicable, of the broker ID of a registered broker-dealer (including a registered SB SEF) that is required by Rule 901(a)(2)(ii)(E)(4) to report a security-based swap effected by or through the registered broker-dealer.[915] As discussed above, the Commission has adopted the requirements that the registered broker-dealer effecting the transaction report the transaction.

As discussed in Section XII(A)(1)(d), supra, the Commission estimates that a maximum of 20 registered broker-dealers, excluding registered SB SEFs, will incur a reporting duty and

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913 The Commission derived its estimate from the following: [($58,000 + $34,000) × 34 covered participants (10 platforms + 4 registered clearing agencies + 20 registered broker-dealers)] = $3,128,000, or approximately $92,000 per covered participant.

914 The Commission derived its estimate from the following: [$34,000 × 34 covered participants (10 platforms + 4 registered clearing agencies + 20 registered broker-dealers)] = $1,156,000, or approximately $34,000 per covered participant.

915 As described above, final Rule 901(a)(2)(ii)(E)(4) requires a registered broker-dealer to report the information in Rules 901(c) and 901(d) for any transaction between two unregistered non-U.S. persons that do not fall within Rule 908(b)(5) where the transaction is effected by or through the registered broker-dealer.

together will report 540 security-based swaps per year. These 20 registered broker-dealers are subject to the amendment to Rule 901(d)(9) adopted herein. To comply with the amendment, a registered broker-dealer likely will build and maintain its reporting infrastructure to include the functionality to capture and incorporate its broker ID into transaction reports. The Commission believes that the cost of creating this functionality is part of the start-up cost of building the broker-dealer's reporting infrastructure,[916] while the cost of maintaining this functionality is part of the annual ongoing cost of the broker-dealer's reporting infrastructure.[917]

7. Discussion of Comments Received

The Commission received a number of comments relating to its analysis of the programmatic costs and benefits associated with the amendments described above.

One commenter stated that the Commission lacks complete data to estimate the number of non-U.S. persons that engage in ANE transactions or the number of registered broker-dealers that intermediate security-based swap transactions, and recommended that the Commission collect a more complete set of data to more precisely estimate the number of non-U.S. persons that would be affected by the proposed rules. The commenter further argued that the lack of complete data made it difficult for the Commission to estimate the market impact, costs, and benefits associated with amendments that apply Regulation SBSR to ANE transactions and transactions intermediated by registered broker-dealers.[918]

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916 See supra Section XII(A)(1)(d), where the Commission estimates the total start-up cost to be $521,500 per registered broker-dealer and $10,430,000 in aggregate, across all registered broker-dealers.

917 See supra Section XII(A)(1)(d), where the Commission estimates the ongoing cost per year to be $316,500 per registered broker-dealer, and $6,330,000 for all registered broker-dealers.

918 See ISDA I at 3, 7. This commenter also argued that the data available to the Commission at the time of the proposal would not have allowed the Commission to

The Commission acknowledges that there are limitations in the TIW data but believes that the data do allow the Commission to arrive at a reasonable estimate of the number of non-U.S. persons affected by the newly adopted rules. In Section II(A)(4)(d), supra, the Commission notes that it identified four foreign dealing entities that likely engaged in ANE activity in 2015 but, based on the level of relevant activity, would be unlikely to register as security-based swap dealers. Based on the analysis, the Commission estimates that four unregistered foreign dealing entities will engage in ANE activity and thus be affected by the newly adopted rules.[919] In Section XII(A)(1)(d), supra, the Commission estimates the compliance costs associated with Rule 901 for these four unregistered foreign dealing entities.[920] As discussed earlier, these programmatic costs are part of the programmatic costs associated with Rule 901 that were accounted for in the Regulation SBSR Adopting Release. While data limitations do not allow the quantification of the benefits associated with the amendments that apply Regulation SBSR to ANE transactions and transactions intermediated by registered broker-dealers, the Commission discusses these benefits qualitatively in Section XIII(H), infra.

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precisely estimate, among other things, the number of non-U.S. persons that carry out dealing activity using personnel in the United States. See id. at 7.

919 Because of the relatively low volume of transaction activity of these four entities during 2015 and the existence of affiliations with other entities expected to register as security-based swap dealers, the Commission believes, even after accounting for growth in the security-based swap market and acknowledging the limitations of the transaction data available for analysis, four is a reasonable estimate of the number of unregistered dealing entities likely to incur assessment costs as a result of new Rule 908(b)(5).

920 The initial aggregate annual costs associated with Rule 901 will be approximately $3,668,000, which corresponds to approximately $524,000 per unregistered entity. The Commission estimates that the ongoing aggregate annual costs on an unregistered entity associated with Rule 901 will be approximately $2,233,000, which corresponds to approximately $319,000 per unregistered entity.

B. Assessment Costs of Unregistered Entities Related to ANE Transactions

1. Assessment Costs Of Foreign Dealing Entities Engaging in ANE Transactions

New Rule 908(b)(5) provides that an unregistered foreign dealing entity that engages in ANE transactions may incur reporting duties under Regulation SBSR, and the amendments to Rule 901(a)(2)(ii)(E) adopted herein provide that such foreign dealing entities will be the reporting side in certain cases. Thus, unregistered foreign dealing entities will incur costs to assess whether they engage in ANE transactions and, if so, whether they will incur reporting duties under Rule 901(a)(2)(ii)(E). The Commission estimates that four unregistered foreign dealing entities will incur such assessment costs. The four unregistered foreign dealing entities are in addition to the 20 additional non-U.S. persons that the Commission estimated would incur assessment costs as a result of the rules finalized in the U.S. Activity Adopting Release.[921] In what follows, the Commission discusses costs that these four unregistered foreign dealing entities might incur to assess whether they engage in ANE transactions.

In the U.S. Activity Adopting Release, the Commission discussed the approaches that market participants may use to determine which transactions involve relevant activity involving U.S. personnel and thus would apply toward dealer de minimis thresholds. The Commission notes that, as an initial matter, a foreign dealing entity likely will review its current dealing operations to ascertain whether it has U.S. personnel that could be used to arrange, negotiate, or execute security-based swaps. The Commission believes that such a determination will not result in significant costs because it requires only that the foreign dealing entity check for the

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921 See U.S. Activity Adopting Release, 81 FR at 8627. This is calculated as 134 non-U.S. persons likely to incur assessment costs to determine the level of ANE activity, less the 114 persons that are likely to incur assessment costs associated with the dealer de minimis rules adopted in the Cross-Border Adopting Release.

existence of U.S. personnel. If the foreign dealing entity does not have U.S. personnel that could be used to arrange, negotiate, or execute security-based swaps, then the foreign dealing entity's assessment of whether it has engaged in ANE activity ends.

If, based on the review described above, the foreign dealing entity determines that it has U.S. personnel that could be used to arrange, negotiate, or execute security-based swaps, then the foreign dealing entity could choose between a number of alternative means of compliance.[922] One alternative would be for the entity to implement systems to check the location of personnel used in arranging, negotiating, or executing individual security-based swap transactions. The Commission believes that the cost of developing and modifying systems to track the location of persons with dealing activity will be substantially similar to the costs of such systems discussed in the U.S. Activity Adopting Release, or $410,000 for the average foreign dealing entity. To the extent that non-U.S. persons already employ systems that track the location of persons with dealing activity, the costs of modifying such IT systems may be lower than the Commission's estimate.[923] In addition to the development or modification of such systems, the Commission estimates that entities would incur the cost of $6,500 per location per year on an ongoing basis for training, compliance, and verification costs.[924] Second, the foreign dealing entity could choose to restrict personnel located in a U.S. branch or office from engaging in ANE activity in connection with the entity's dealing activity with non-U.S. counterparties. Such a restriction on communication and staffing for purposes of avoiding certain Title VII requirements would

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922 See U.S. Activity Adopting Release, 81 FR at 8627-28.

923 See id. at 8627.

924 This cost is calculated as (internal cost, 90 hours × $50 per hour = $4,500) + (consulting costs, 10 hours × $200 per hour = $2,000) = a total cost of $6,500 per location per year. See also U.S. Activity Adopting Release, 81 FR at 8627.

reduce the costs of assessing the location of personnel involved in ANE activity and could remove entirely the need to implement systems to track the activities of U.S. personnel on a per-transaction basis. The Commission estimates that the costs of establishing policies and procedures to restrict communication between personnel located in the United States employed by non-U.S. persons (or their agents) and other personnel involved in dealing activity would be approximately $28,300 for each entity that chooses this approach.[925]

Finally, a foreign dealing entity could avoid assessing transactions on a per-transaction basis by choosing to report all transactions to a registered SDR, regardless of the location of personnel engaged in ANE activity. Such an alternative may be reasonable for foreign dealing entities that expect few transactions involving foreign counterparties to be arranged, negotiated, or executed by personnel located outside the United States, such as foreign dealing entities that primarily transact in security-based swaps on U.S. reference entities or securities, and generally rely on personnel located in the United States to perform market-facing activities.[926]

The Commission believes that the same principles apply to foreign dealing entities that rely on agents to arrange, negotiate, or execute security-based swaps on their behalf. The Commission anticipates that foreign dealing entities may employ any of the strategies above to comply with the final rules through the choice of their agents. For example, a foreign dealing entity may choose an agent that does not use U.S.-based personnel for arranging, negotiating, or executing security-based swap transactions with non-U.S. counterparties to avoid assessment costs. The Commission also anticipates that a foreign dealing entity might rely on representations from its agents about whether transactions conducted on its behalf involved

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925 See id. at 8628.

926 See id.

relevant dealing activity by personnel from a location in the United States. This could occur on a transaction-by-transaction basis, or, if the agent uses personnel located in the United States in all or none of its transactions, it could choose to make a representation about the entirety of the agent's business.

As in the U.S. Activity Adopting Release, the Commission believes that a foreign dealing entity will inform its choice between the alternative compliance strategies with a one-time review of its security-based swap business lines. This review likely will encompass both employees of the foreign dealing entity as well as employees of agents used by the foreign dealing entity, and identify whether these personnel are involved in arranging, negotiating, or executing security-based swaps. The information gathered as a result of this review will allow the foreign dealing entity to assess the revenues that it expects to flow from transaction activity performed by U.S. personnel. This information also will help these market participants form preliminary estimates about the costs associated with various alternative compliance strategies, including the trade-by-trade analysis outlined above. This initial review may be followed with reassessment at regular intervals or subsequent to major changes in the market participant's security-based swap business, such as acquisition or divestiture of business units. The Commission estimates that the per-entity initial costs of a review of business lines will be approximately $104,000. Further, the Commission believes that periodic reassessment of business lines will cost, on average, $52,000 per year, per entity.[927]

2. Assessment Costs Of Unregistered U.S. Persons Engaging in Security-Based Swaps Against Foreign Entities

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927 See id. at n. 283.

New Rules 901(a)(2)(ii)(E)(2) and 901(a)(2)(ii)(E)(3) create reporting duties for unregistered U.S. persons that transact security-based swaps with unregistered entities. Under Rule 901(a)(2)(ii)(E)(2), in a transaction between an unregistered U.S. person and an unregistered foreign dealing entity that is engaging in ANE activity, the sides would be required to select the reporting side. Under Rule 901(a)(2)(ii)(E)(3), in a transaction between an unregistered U.S. person and an unregistered non-U.S. person that is not engaging in ANE activity, the unregistered U.S. person is the reporting side. Because of these reporting duties, an unregistered U.S. person could incur costs to assess whether its foreign counterparty in a security-based swap transaction is an unregistered foreign dealing entity engaging in ANE activity.

The Commission believes that unregistered U.S. persons likely will seek to avoid the costs of assessing whether a foreign counterparty is engaging in ANE activity by choosing to transact only with registered entities for which assessment is not required.[928] The incentive of unregistered U.S. persons to avoid transacting with unregistered foreign counterparties is strengthened by the fact that there will be very few unregistered foreign dealing entities that might engage in ANE activities, and that they likely will participate in a relatively small number of security-based swap transactions in the U.S. market. As noted earlier,[929] the Commission estimates that only four foreign dealing entities will remain below the de minimis threshold and thus not have to register as security-based swap dealers.[930] Furthermore, to the extent that the

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928 See infra Section XIII(H)(1) (discussing the potential competitive effects associated with assessments for ANE activity by unregistered U.S. persons).

929 See supra note 885 and accompanying text.

930 For foreign dealing entities that register with the Commission as security-based swap dealers, reporting duties stem from their registration status, not from the presence of any

usage of U.S. personnel by such a foreign dealing entity to engage in ANE activity is a question for a unregistered U.S. person who is a potential counterparty, the foreign dealing entity has an incentive to readily provide this information to the unregistered U.S. person—thereby obviating the need for the U.S. person to conduct an assessment—and to agree to be the reporting side. If the foreign dealing entity did not agree to be the reporting side, the unregistered U.S. person would have the option of transacting with one of several registered security-based swap dealers, both U.S. and foreign, for which the U.S. counterparty would not have to assess for ANE activity or negotiate with the other side about the reporting duty, because the duty would fall to the registered security-based swap dealer pursuant to existing Rule 901(a)(2)(ii)(B). Therefore, the Commission believes that any assessment costs incurred by unregistered U.S. persons will be limited.

3. Assessment Costs Associated with Rule 901(a)(2)(ii)(E)(4)

Under new Rule 901(a)(2)(ii)(E)(4), respondent broker-dealers (including SB SEFs) will be required to report security-based swap transactions that they intermediate if neither side incurs the duty to report (i.e., neither side includes a U.S. person, a registered security-based swap dealer, a registered major security-based swap participant, or a non-U.S. person engaging in an ANE transaction). As a result, respondent broker-dealers will incur certain costs to assess the circumstances in which they incur the duty to report transactions because neither side incurs the duty. Any such assessment costs are reflected in the cost estimates for the policies and procedures that respondent broker-dealers are required to establish, maintain, and enforce under

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ANE activity. Therefore, for these entities, no assessment will be needed to know whether a reporting duty arises from a particular transaction.

Rule 906(c).[931] The programmatic costs estimated by the Commission for the amendment to Rule 906(c) already incorporate the cost incurred by respondent broker-dealers when assessing whether they have a duty to report security-based swap transactions. Therefore, respondent broker-dealers will not incur any additional costs beyond the programmatic cost for the amendment to Rule 906(c) adopted herein.[932]

4. Discussion of Comments Received

The Commission received a number of comments relating to its analysis of the assessment costs associated with the proposed amendments to Rules 901 and 908 included in the U.S. Activity Proposal. One commenter pointed out that the Commission's analysis of assessment costs was incomplete because the analysis did not account for the additional work that market participants might undertake to meet reporting requirements during the Interim Period (i.e., the period beginning on Compliance Date 1 but before the SBS entities registration compliance date).[933] According to the commenter, this additional work and the associated cost could be avoided if the Commission scheduled Compliance Date 1 after the SBS entities registration compliance date.[934] The same commenter also suggested that the Commission's cost analysis failed to account for the possibility that some of the documentation and processes

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931 See supra Section XII(A)(3) (discussing the costs of amended Rule 906(c)).

932 See id.

933 See ISDA II at 11 (stating that the additional work involves efforts to "exchange transaction level party data, develop a new approach to use the tie-breaker logic, enter into reporting side agreements and delegation agreements, and build dual sets of reporting side logic to develop an organized industry approach to comply with SBSR"); ISDA III at 9 (stating that the Commission did not consider the cost and effort that market participants would spend to develop and implement interim reporting side agreements, and the "cost that market infrastructure providers would incur to duplicate efforts in order to support both pre- and post-registration reporting side approaches").

934 See ISDA II at 12; ISDA III at 9, 12.

developed by market participants for Interim Period reporting would become obsolete after security-based swap dealers register with the Commission.[935]

As discussed in Section X(C), supra, the Commission acknowledges the commenters' concerns that requiring compliance with Regulation SBSR before the SBS entities registration compliance date would have raised numerous challenges, and that addressing these challenges would have necessitated time and investment to create interim solutions that might not have been useful after the SBS entities registration compliance date. Therefore, the Commission has determined that market participants will not be required to comply with Regulation SBSR until after the SBS entities registration compliance date.

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

Section 3(f) of the Exchange Act[936] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act[937] requires the Commission, when making rules under the Exchange Act, to consider the impact of such rules on competition. Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission believes that the amendments to Regulation SBSR adopted herein will result in further progress towards providing a means for the Commission and other relevant

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935 See ISDA I at 13.

936 15 U.S.C. 78c(f).

937 15 U.S.C. 78w(a)(2).

authorities to gain a better understanding of the aggregate risk exposures and trading behaviors of participants in the security-based swap market; facilitate public dissemination of security-based swap transaction information, thus promoting price discovery and competition by improving the level of information to all market participants; and improve risk management by security-based swap counterparties.[938]

The economic effects of these amendments on firms that provide infrastructure services to security-based swap counterparties and the security-based swap market generally are discussed in detail below. The Commission also considered the effects that these amendments might have on efficiency, competition, and capital formation. The Commission believes that its action today is likely to affect competition among firms that provide security-based swap infrastructure services to market participants and affect efficiency as a result of the way that these amendments allocate regulatory burdens. The effects of these amendments on capital formation are likely to be indirect and will result from the way in which these amendments affect the behavior of registered clearing agencies, counterparties to security-based swaps, and registered SDRs. To the extent that these amendments promote more efficient provision of security-based swap market infrastructure services, there would be lower transactions costs,[939] which would free resources for investment and capital formation.

This analysis has been informed by the relationships among regulation, competition, and market power discussed in Section II(B), supra. An environment in which there is limited competition in SDR services could impose costs on the security-based swap market, including

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938 See 80 FR at 14779.

939 These transactions costs would include both implicit and explicit costs. Implicit transactions costs are the spread between transaction prices and the fundamental value of the assets being traded. Explicit transactions costs, by contrast, are commissions and other fees paid by counterparties for effecting transactions in the market.

higher prices or lower quality services from SDRs. For example, a registered SDR that faces few or no competitors could seek to impose higher prices, because persons with a duty to report security-based swaps under Regulation SBSR might not be able to identify a competing SDR that offers prices close enough to marginal cost to make changing service providers efficient. Further, if consumers of SDR services have few alternative suppliers from which to choose, SDRs would have fewer incentives to produce more efficient SDR processes and services. This combination of higher prices for SDR services and/or less efficient SDR services could reduce security-based swap transaction activity undertaken by market participants to hedge assets that have cash flows that are related to the cash flows of security-based swaps. A reduction in hedging activity through security-based swaps could reduce the values of assets held by market participants and in turn result in welfare losses for these market participants.

However, there could be some offsetting benefit to limited competition in the market for SDR services for both regulatory authorities and the public. A small set of registered SDRs could make it simpler for the Commission and other relevant authorities to build a complete picture of transaction activity and outstanding risk exposures in the security-based swap market, and could limit the need for market observers to aggregate the security-based swap transaction data disseminated by multiple SDRs before using it as an input to economic decisions.

The Commission also considered the effects on efficiency, competition, and capital formation stemming from the amendments to Rules 901 and 908 that will subject additional cross-border security-based swaps to regulatory reporting and public dissemination, and assign the duty to report those cross-border transactions. The adopted amendments might affect the security-based swap market in a number of ways, many of which are difficult to quantify. In particular, a number of the potential effects that the Commission discusses below are related to

price efficiency, liquidity, and risk sharing. These effects are difficult to quantity for a number of reasons. First, in many cases the effects are contingent upon strategic responses of market participants. For instance, the Commission notes in Section XIII(H)(2), infra, that under the adopted approach non-U.S. persons may choose to relocate personnel, making it difficult for U.S. counterparties to access liquidity in security-based swaps. The magnitude of these effects on liquidity and on risk sharing depend upon a number of factors that the Commission cannot estimate, including the likelihood of relocation, the availability of substitute liquidity suppliers, and the availability of substitute hedging assets. Therefore, much of the discussion below is qualitative in nature, although the Commission tries to describe, where possible, the direction of these effects.

Not only can some of these effects be difficult to quantify, but there are many cases where a rule could have two opposing effects, making it difficult to estimate a net impact on efficiency, competition, or capital formation. For example, in the discussion of the net effect of certain amendments to Regulation SBSR on efficiency, the Commission expects that post-trade transparency may have a positive effect on price efficiency, while it could negatively affect liquidity by providing incentives for non-U.S. persons to avoid contact with U.S. persons. The magnitude of these two opposing effects will depend on factors such as the sensitivity of traders to information about order flow, the impact of public dissemination of transaction information on the execution costs of large orders, and the ease with which non-U.S. persons can find substitutes that avoid contact with U.S. personnel. Each of these factors is difficult to quantify individually, which makes the net impact on efficiency equally difficult to quantify.

A. Reporting of Clearing Transactions

New Rule 901(a)(2)(i) assigns the duty to report a security-based swap that has a registered clearing agency as a direct counterparty to that registered clearing agency. Existing Rule 901(a) does not assign reporting obligations for any clearing transactions; thus, in the absence of Rule 901(a)(2)(i), clearing transactions would not be subject to any regulatory reporting requirement. Without a requirement for clearing transactions to be reported to a registered SDR, the Commission and other relevant authorities would have only limited ability to carry out market oversight functions. For example, while the Commission could access transaction reports of alphas and uncleared transactions, the Commission would not be able to obtain from registered SDRs information about the open security-based swap positions of the relevant counterparties after alpha transactions are cleared. Requiring that clearing transactions be reported to registered SDRs and delineating reporting responsibilities for these transactions are particularly important given the level of voluntary clearing activity in the market as well as the mandatory clearing determinations that will be required under Title VII.[940]

The Commission believes that, because a registered clearing agency creates the clearing transactions to which it is a counterparty, the registered clearing agency is in the best position to provide complete and accurate information for the clearing transactions resulting from the security-based swaps that it clears.[941] If the Commission assigned the reporting obligation for clearing transactions to a person who lacked direct access to the information required to be reported, that person would be obligated to obtain the required information from the clearing agency or another party who had access to the information to discharge its reporting obligation.

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940 See General Policy on Sequencing, 77 FR at 35636.

941 Although registered clearing agencies might pass on the costs associated with reporting clearing transactions, at least in part, to their non-reporting counterparties, the costs that are passed on to non-reporting parties are likely to be lower than the costs that the non-reporting parties would face if they had direct responsibility to report these transactions.

Thus, assigning reporting obligations to the non-clearing-agency side could increase the number of reporting steps, thereby increasing the possibility of discrepancy, error, or delay in the reporting process. Placing the reporting duty on the non-clearing-agency side could also reduce data reliability if the data has to be reconfigured to be acceptable by the SDR.[942] Inaccurate or delayed reporting of clearing transactions would negatively impact the ability of the Commission and other relevant authorities to understand, aggregate, and act on the transaction information.

New Rule 901(a)(2)(i) also allows the registered clearing agency that is required to report all clearing transactions to which it is a counterparty to select the registered SDR to which to report. As noted in Section II(B), supra, because many of the infrastructure requirements for entrant SDRs are shared by registered clearing agencies, registered clearing agencies might pursue vertical integration into the market for SDR services at a lower cost relative to potential entrants from unrelated markets. If the costs of reporting to affiliated SDRs are lower than the costs of reporting to unaffiliated SDRs, registered clearing agencies will likely choose to report clearing transactions to an affiliated SDR. Because a registered clearing agency is likely to be involved in developing an affiliated SDR's systems, the clearing agency will likely avoid costs related to translating or reformatting data due to incompatibilities between data reporting by the registered clearing agency and data intake by the SDR. To the extent that a clearing agency incurs a lower cost when connecting to an affiliated SDR, the cost of reporting clearing transactions to an affiliated SDR is likely to be lower than the cost of reporting to an independent SDR. While both a clearing-agency-affiliated SDR and an independent SDR could lower their average costs by adding clearing transactions to their existing volume of reported transactions, only the clearing agency can reduce the cost of connecting to its affiliated SDR.

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942 See supra Section III(B).

Vertical integration of security-based swap clearing and SDR services could be beneficial to other market participants if they ultimately share in these efficiency gains. For example, efficiency gains due to straight-through processing from execution to reporting could lower transactions costs for market participants and reduce the likelihood of data discrepancies and delays. Even if registered clearing agencies do not enter the market for SDR services, the potential for them to pursue a vertical integration strategy could motivate independent SDRs to offer more competitive service models.

The Commission is aware of the potential costs of allowing registered clearing agencies to select the SDR to which they report. If Rule 901(a)(2)(i) encourages the formation of clearing-agency-affiliated SDRs that would not otherwise emerge, the aggregate number of registered SDRs might reflect an inefficient level of service provision. Once an entity has established the functionality to offer clearing and central counterparty services for security-based swaps, only marginal additional investments would likely be needed to offer SDR services. The ease with which registered clearing agencies set up affiliated SDRs could affect how well all SDRs exploit economies of scale. As noted in Section II(B)(2), supra, in the market for SDR services, economies of scale arise from the ability to amortize the fixed costs associated with infrastructure over a large volume of transactions. With a fixed volume of reportable transactions, exploitation of economies of scale by each SDR becomes more limited as the number of SDRs increases. Thus, the entry of clearing-agency-affiliated SDRs could indicate that each SDR benefits from an affiliation with a clearing agency and might not, in aggregate, result in the provision of transaction reporting services at a lower per-transaction cost than if there were fewer SDRs. Inefficiencies could result if the Commission and the public had to receive and process security-based swap transaction data from a larger number of registered

SDRs. Connecting to a larger number of SDRs and merging transaction data with potentially different data formats could be costly and difficult.

The potential for efficiency gains through vertical integration of clearing agencies and SDRs could foreclose entry into the market for SDR services except by firms that are already present in the market for clearing agency services. Registered clearing agencies are more likely to benefit from efficiencies in shared infrastructure than independent SDRs, given that it is more difficult for an SDR to enter the market for clearing services than for a clearing agency to enter the market for SDR services.[943] Moreover, to the extent that an affiliated SDR is not as cost-effective as a competing independent SDR, a registered clearing agency could subsidize the operation of its affiliate SDR to provide a competitive advantage in its cost structure over independent SDRs. Hence, providing a registered clearing agency with the discretion to select the registered SDR could provide a competitive advantage for clearing-agency-affiliated SDRs relative to independent SDRs. If a registered clearing agency subsidizes its affiliated SDR using revenue generated from its clearing business, the clearing agency's members would indirectly bear some of the costs of operating the affiliated SDR. Such an allocation of SDR cost to clearing members could be inefficient because the benefits of reporting transactions to an SDR (i.e., the benefits of regulatory reporting and public dissemination) accrue to market participants generally, and not just to clearing members.

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943 A registered clearing agency, particularly one that acts as a central counterparty for security-based swaps, needs significant financial resources to ensure that it can absorb losses from clearing member defaults, while SDRs do not. Similarly, a registered clearing agency requires significant risk management expertise that an SDR does not. Thus, the barriers to entry into the clearing agency market are higher than the barriers to entry into the SDR market.

As a result of new Rule 901(a)(2)(i), clearing members might find that the records of their security-based swap transactions are fragmented across multiple registered SDRs (i.e., alpha SDRs and, in addition, clearing-agency-affiliated SDRs to which registered clearing agencies report clearing transactions). The Commission does not believe, however, that fragmentation in the storage of transaction reports would create significant difficulties or inefficiencies for a clearing member that wishes to consolidate all its security-based swap transaction reports at a chosen SDR to facilitate activities such as risk management. Such a clearing member might contract with a registered clearing agency, for a fee, to transmit data for its clearing transactions to an SDR of the clearing member's choice as a duplicate report. This would allow the registered clearing agency to satisfy its obligations while permitting the clearing member to establish and maintain access to a consolidated record of all of its security-based swap transactions in a single SDR. However, in this case, the registered clearing agency could choose a fee schedule that encourages the clearing member to report its uncleared bilateral transactions to the affiliated SDR. Such a fee schedule might involve the clearing agency offering to terminate alpha transactions reported to its affiliate SDR for a lower price than alpha transactions to an independent SDR.

As discussed in Section XII(B)(1)(a), supra, the Commission has estimated the annual and on-going costs associated with requiring registered clearing agencies to establish connections to registered SDRs. The Commission believes that, for a given registered clearing agency, these costs are likely to be lower for a connection to an affiliated SDR than to an independent SDR. Because the registered clearing agency is likely to have been involved in developing its affiliated SDR's systems, the clearing agency can likely avoid costs related to translating or reformatting data due to incompatibilities between the clearing agency's data

format and the data format required by the SDR. The reporting of clearing transactions by registered clearing agencies to their affiliated SDRs could promote efficiency in two ways. First, a registered clearing agency would incur lower connection costs when reporting to an affiliated SDR. Second, the quality of transaction data available to the Commission could be improved to the extent that the Commission gains access to marginally more reliable transaction data because reporting by a registered clearing agency to an affiliated SDR avoids introducing errors or other data discrepancies that otherwise could occur when translating or reformatting transaction data for submission to an independent SDR.

B. Alternative Approaches to Reporting Clearing Transactions

As part of the economic analysis of the amendments adopted herein, the Commission has considered the market power that providers of security-based swap market infrastructure might be able to exercise in pricing the services that they offer and the possibility that these infrastructures could shift the costs created by regulatory burdens onto their customers. The Commission included these economic considerations in its evaluation of alternative approaches to assigning reporting obligations for clearing transactions. As outlined above, the Commission considered four alternatives for assigning these reporting obligations as well as comments received related to these alternatives. The following section discusses the likely economic effects of these alternatives, including their likely impacts on efficiency, competition, and, indirectly, capital formation.

1. Alternative 1

The first alternative would be to apply the reporting hierarchy in existing Rule 901(a)(2)(ii) to clearing transactions. Under Alternative 1, a counterparty to a clearing transaction other than the clearing agency, such as a registered security-based swap dealer,

would have the duty to report the clearing transaction. As discussed above, assigning reporting obligations to the non-clearing-agency side could increase the number of reporting steps, thereby increasing the possibility of discrepancy, error, or delay in the reporting process. Placing the reporting duty on the non-clearing-agency side also could reduce data reliability if the data has to be reconfigured to be acceptable by the SDR.[944]

The Commission continues to believe that it is unlikely that non-clearing-agency counterparties would be subject to significant additional costs associated with building infrastructure to support regulatory reporting for clearing transactions under this alternative, for two reasons.[945] First, to the extent that market participants that submit security-based swaps to clearing also engage in uncleared transactions and sit atop the reporting hierarchy, they likely already have the required infrastructure in place to support regulatory reporting of alphas and uncleared transactions. The Commission anticipates that, as a result, there might be only marginal additional costs for reporting sides to report clearing transactions, if the Commission selected Alternative 1. Moreover, the Commission anticipates that, once infrastructure is built, the per-transaction cost of data transmission would not vary substantially between registered clearing agencies, who are required to report under new Rule 901(a)(2)(i), and reporting sides, who would be required to report under Alternative 1.

Second, non-clearing agency counterparties, particularly those who engage solely in cleared trades or who are not high in the reporting hierarchy, could enter into an agreement under which the registered clearing agency would submit the information to a registered SDR on their behalf. This service could be bundled as part of the other clearing services purchased, and would

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944 See supra Section III(B).

945 See Regulation SBSR Proposed Amendments Release, 80 FR at 14781.

result in an outcome substantially similar to giving the registered clearing agency the duty to report. One difference, however, is that the customer of the registered clearing agency could, under this alternative, request that the information be submitted to a registered SDR unaffiliated with the registered clearing agency, a choice that, under the adopted approach, is at the discretion of the registered clearing agency. Nevertheless, the Commission believes that, to the extent that it is economically efficient for the registered clearing agency to report the details of cleared transactions on behalf of its counterparties, Alternative 1 would likely result in ongoing costs of data transmission for market participants and infrastructure providers that are, in the aggregate, similar to the Commission's approach in Rule 901(a)(2)(i).

If registered clearing agencies reporting to registered SDRs on behalf of counterparties is not available under Alternative 1, then some counterparties would be required to build infrastructure to support regulatory reporting for clearing transactions. Analysis of single-name CDS transactions in 2015 in which a clearing agency was a direct counterparty shows approximately 54 market participants that are not likely to register as security-based swap dealers or major security-based swap participants, and therefore might be required to build infrastructure to support regulatory reporting for clearing transactions in order to maintain current trading practices in the security-based swap market.[946] One commenter asserted that the

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946 See Regulation SBSR Proposed Amendments Release, 80 FR at 14781-82. To arrive at this estimate, the Commission staff used single-name CDS transaction data for 2015 to produce a list of all direct counterparties to a clearing agency and removed those persons likely to register as security-based swap dealers or major security-based swap participants. The list of likely registrants was constructed using the methodology described in the Cross-Border Adopting Release. See 79 FR at 47296, n. 150 (describing the methodology employed by the Commission to estimate the number of potential security-based swap dealers); id. at 47297, n. 153 (describing the methodology employed by the Commission to estimate the number of potential major security-based swap participants).

Commission did not adequately address the role of third parties that could perform reporting duties on behalf of reporting parties.[947] As noted in Section III(B), supra, Regulation SBSR permits the use of agents to carry out reporting duties and the Commission expects that a market participant that would be assigned the reporting obligation for clearing transactions under Alternative 1 would contract with an agent if it expects use of an agent to be less costly than carrying out the reporting obligation itself. As a result, the ability to use agents could further reduce costs to market participants under Alternative 1.

Under Alternative 1, non-clearing-agency counterparties would have the ability to choose which registered SDR receives their reports. Because non-clearing-agency counterparties would have this choice, registered SDRs under the alternative approach might have additional incentive to provide high levels of service to attract this reporting business by, for example, providing such counterparties with convenient access to reports submitted to the registered SDR or by supporting the counterparties' efforts at data validation and error correction. Additionally, ensuring that these counterparties have discretion over which registered SDR receives the transaction data could allow these counterparties to consolidate their security-based swap transactions into a single SDR for record-keeping purposes or for operational reasons, though only to the extent that they can identify a registered SDR that accepts reports for all relevant asset classes.

In assessing Alternative 1, the Commission recognizes that registered clearing agencies have a comparative advantage in processing and preparing data for reporting cleared transactions to a registered SDR. Registered clearing agencies terminate alpha transactions, as well as create beta and gamma transactions and all subsequent netting transactions, and so already possess all

947 See Markit Letter at 8.

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

The Commission believes that, given this comparative advantage, applying to clearing transactions the same reporting hierarchy that it has adopted for uncleared transactions would result in a registered clearing agency reporting the transaction data to a registered SDR of a non-clearing-agency counterparty's choice as a service to the non-clearing-agency counterparties to its clearing transactions. In this respect, the entity that performs the actual reporting of clearing transactions would likely be the same as with adopted Rule 901(a)(2)(i), which would assign this duty to the registered clearing agency. The key difference under Alternative 1 is that the non-clearing-agency counterparty would generate this responsibility through private contract and could terminate the agreement and assume the reporting responsibility, should it perceive the fee or service terms as unreasonable. Such an agreement also could specify the registered SDR to which the clearing agency should send transaction data on behalf of the non-clearing-agency counterparty. The ability to terminate such an agreement could diminish the potential bargaining power that the registered clearing agency would otherwise have if the registered clearing agency were assigned the duty to report. Further, by allowing the non-clearing-agency counterparty to choose between registered SDRs, such an agreement could promote competition between SDRs.

However, because the non-clearing-agency counterparty might still have to rely on assistance from the clearing agency to satisfy the reporting obligations—particularly for any subsequent clearing transactions resulting from netting and compression of multiple betas and

gammas—the reduction in clearing agency bargaining power might not be substantial. A registered clearing agency that supplies this information and converts it into the format prescribed by a non-clearing-agency counterparty's chosen SDR so that the counterparty can fulfill its reporting duty by submitting transaction data to a registered SDR of its choice could still have significant bargaining power with respect to providing that information.

The Commission believes that the adopted rules are generally consistent with the outcome under Alternative 1 in a number of key respects. First, under both approaches to reporting—one in which the Commission assigns the reporting responsibility for clearing transactions to registered clearing agencies, and the other in which the market allocates the reporting responsibility in the same way— it is likely that registered clearing agencies will report clearing transactions to their affiliated SDRs.[948] Under an approach in which the Commission does not assign any reporting duties to registered clearing agencies, counterparties would likely be assessed an explicit fee by registered clearing agencies for submitting reports on the counterparties' behalf. Under Rule 901(a)(2)(i), the fees associated with these services will likely be part of the total fees associated with clearing security-based swaps.

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948 Unless it preferred a particular registered SDR for operational reasons discussed above, a non-clearing-agency counterparty to a clearing transaction would likely contract with the clearing agency to report clearing transactions to the registered SDR that offers the lowest price, most likely the clearing agency affiliate. As discussed in Section II(B)(1), supra, a registered clearing agency and its affiliated SDR have greater control over the reporting process relative to sending transaction data to an independent SDR. This greater control lowers the cost of transmitting transaction data from the clearing agency to its affiliated SDR relative to transmitting the same data to an independent SDR. The lower cost potentially allows the affiliated SDR to charge the lowest price among competing SDRs.

In light of comments received on its proposal, the Commission acknowledges caveats to this analysis.[949] Under Alternative 1, a non-clearing agency counterparty may alter the disposition of its clearing transaction data as a result of having the right to select the registered SDR to which this information is submitted. In particular, a non-clearing agency counterparty with the duty to report clearing transactions would compare the costs and benefits of contracting with the clearing agency to fulfil reporting obligations on its behalf by reporting to an affiliated SDR,[950] with the costs and benefits of alternative arrangements that would place the same data at an independent SDR of its choice.

Second, under Alternative 1 and under the adopted approach, efficiency gains stemming from consolidation of the reporting function within registered clearing agencies would be split between such clearing agencies and security-based swap counterparties. The difference between these two regulatory approaches turn on how these gains are split.

The Commission believes that Alternative 1 would not necessarily restrict the ability of registered clearing agencies to exercise market power in ways that may allow them to capture the bulk of any efficiency gains.[951] First, while a counterparty to a registered clearing agency could contract with the clearing agency to receive the information about netting and compression transactions that would enable re-transmission of the cleared transaction data to a registered SDR, depending on the policies and procedures of the registered clearing agency, these data might not be in the format that is required for submission to the counterparty's SDR of choice.

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949 See Markit Letter at 12. Although the commenter asserts the benefits of allowing non-clearing agency counterparties discretion over which registered SDR receives their data in its assessment of Alternative 3, the Commission believes that this analysis applies equally to the assessment of Alternative 1.

950 See supra note 948.

951 See Regulation SBSR Proposed Amendments Release, 80 FR at 14782.

As a result, counterparties to registered clearing agencies would bear the costs associated with restructuring the data that they receive from registered clearing agencies before submitting transaction reports to a registered SDR. Such costs could limit the feasibility of assuming the reporting responsibility rather than contracting to have the registered clearing agency perform the duty. However, the Commission acknowledges, in line with comments received on its proposal,[952] that the use of agents to carry out reporting duties could mitigate these costs, if agents are able to restructure data more efficiently than counterparties.

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

Third, under this alternative the registered clearing agency that is party to the transaction potentially has weaker incentives to provide high-quality regulatory data to the counterparty with a duty to report, which could reduce the quality of regulatory data collected by registered SDRs.

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952 See Markit Letter at 8.

The person with the duty to report a transaction has strong incentives to ensure that the transaction details are transmitted in a well-structured format with data fields clearly defined, and that contain data elements that are validated and free of errors because, pursuant to Regulation SBSR, this person is responsible for making accurate reports and, if necessary, making corrections to previously submitted data. Not only would the registered clearing agency have no duty under Regulation SBSR to provide information to its counterparty, but additionally, market forces might not provide sufficient motivation to the registered clearing agency to provide data to the counterparty in a manner that would minimize the counterparty's reporting burden. If registered clearing agencies exercise their market power against counterparties, the counterparties might have limited ability to demand high-quality data reporting services from registered clearing agencies and may require the services of agents that clean and validate transaction data that they receive.

The Commission believes, however, that despite a similarity in ultimate outcomes, and any benefits that might flow from enabling registered SDRs to compete for clearing transaction business, this alternative does not compare favorably to the adopted approach. As discussed above, assigning reporting obligations to the non-clearing-agency side could increase the number of reporting steps, thereby increasing the possibility of discrepancy, error, or delay in the reporting process. Placing the reporting duty on the non-clearing-agency side also could reduce data reliability if the data has to be reconfigured to be acceptable by the SDR. The Commission believes that discrepancies, errors, and delays are less likely to occur if the duty to report clearing

transactions is assigned to registered clearing agencies directly, because there would be no additional or intermediate steps where data would have to be transferred or reconfigured.[953]

2. Alternative 2

A second, closely related alternative would involve placing registered clearing agencies within the Regulation SBSR reporting hierarchy, below registered security-based swap dealers and registered major security-based swap participants but above counterparties that are not registered with the Commission. Alternative 2 would assign the reporting obligation to a registered security-based swap dealer or registered major security-based swap participant when it is a counterparty to a registered clearing agency, while avoiding the need for non-registered persons to negotiate reporting obligations with registered clearing agencies.

As with Alternative 1, Alternative 2 potentially results in additional reporting steps and could marginally reduce the quality of regulatory data relative to the adopted approach. A key difference, however, is that Alternative 2 would reduce the likelihood of reporting obligations falling on unregistered persons, who would likely have less market power in negotiations with registered clearing agencies over the terms of reporting to a registered SDR. Larger counterparties, i.e., those with greater transaction flow, would likely be better able to negotiate better terms by which clearing agencies report transactions on their behalf or provide the counterparties with access to the clearing data so that they can perform their own reporting.

In its discussion of Alternative 1, the Commission noted three particular ways in which limited competition among registered clearing agencies could result in poorer outcomes for non-clearing-agency counterparties. First, when these counterparties obtain clearing data from a registered clearing agency, they would likely incur any costs related to reformatting the data for

953 See supra Section III(B).

submission to a registered SDR, including the costs of outsourcing these activities to an agent. Second, registered clearing agencies might charge these counterparties high fees for access to regulatory data that counterparties are required to submit to registered SDRs. Third, registered clearing agencies might have weak incentives to ensure that the data that they supply to non-clearing-agency counterparties are of high quality, since the non-clearing-agency counterparties would bear the costs of error correction.

Limiting the extent to which registered clearing agencies can exercise the market power resulting from limited competition over their counterparties could reduce some of the drawbacks to the Alternative 1. In particular, registered clearing agencies may be less likely to exercise market power in negotiations with larger market participants, particularly when these market participants are also clearing members. Clearing members play key roles in the governance and operation of registered clearing agencies, often contributing members of the board of directors. Moreover, clearing members contribute to risk management at registered clearing agencies by, for example, contributing to clearing funds that mutualize counterparty risk.[954] Nevertheless, the Commission believes that Alternative 2 does not fully address frictions that arise from limited competition among registered clearing agencies, such as high clearing fees or low quality services. The Commission believes that Alternative 2 would be less efficient than requiring the registered clearing agency to report the transaction information directly to a registered SDR, because the registered clearing agency is the only person who has complete information about a clearing transaction immediately upon its creation.

3. Alternative 3

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

The Commission considered a third alternative that would make the reporting side for the alpha responsible for reporting both the beta and gamma.[955] Alternative 3 would require the reporting side for the alpha also to report information about a security-based swap to which it is not a counterparty, i.e., the clearing transaction between the registered clearing agency and the non-reporting side of the alpha. As discussed in Section III(B), supra, Alternative 3 would be operationally difficult to implement, could create confidentiality concerns, and could increase the likelihood of data discrepancy, error, and delay because Alternative 3 requires additional reporting steps. Alternative 3 also would require reporting sides to negotiate with registered clearing agencies to obtain transaction data and to bear the costs of correcting errors in these data, exposing them to the market power exercised by registered clearing agencies. Also, because the reporting side of the alpha would report the beta and gamma, Alternative 3 is premised on the view that the beta and gamma are life cycle events of the alpha. The Commission, however, considered and rejected this approach in the Regulation SBSR Adopting Release.

In addition, Alternative 3 could result in incomplete regulatory data because it could raise questions about who would report clearing transactions associated with the compression and netting of beta or gamma transactions. For example, suppose a non-dealer clears two standard contracts on the same reference entity using a single registered clearing agency, each contract

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955 The Commission considered and rejected this approach in the Regulation SBSR Adopting Release. See 80 FR at 14639 ("the new term 'clearing transaction' makes clear that security-based swaps that result from clearing (e.g., betas and gammas in the agency model) are independent security-based swaps, not life cycle events of the security-based swap that is submitted to clearing (e.g., alpha security-based swaps)"). However, the Commission is discussing this alternative in response to a commenter that, in response to the Regulation SBSR Proposed Amendments Release, recommended that the Commission adopt this approach. See Markit Letter at 11-13.

having a different registered security-based swap dealer as counterparty. Under this alternative to the adopted approach, each dealer would be responsible for reporting a gamma security-based swap between the non-dealer and the registered clearing agency. However, this alternative does not specify which of four potential persons (the non-dealer, one or the two registered security-based swap dealers, or the clearing agency) would be required to report the contract that results from the netting of the two gamma security-based swaps between the non-dealer and the registered clearing agency.

4. Commenter Views

One commenter proposed a fourth alternative to assigning reporting duties for cleared transactions.[956] Under this alternative, "the platform would remain the reporting side for all platform-executed trades while for bilateral or off platform cleared transactions, the reporting side would be the clearing agency. However, the clearing agency would be required to submit beta and gamma trade records to the alpha SDR (which would be determined by the alpha trade reporting side and not the clearing agency)."[957] For the reasons discussed above, the Commission considers this alternative less appropriate than the adopted approach.[958] While the Commission concurs with the approach of requiring the registered clearing agency to report the resulting beta and gamma transactions, the Commission believes that the registered clearing agency, when it has the duty to report security-based swaps, should be able to choose the registered SDR to which it reports.[959]

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956 See Markit Letter at 13.

957 Id.

958 See supra Section III(B).

959 See supra Section III(C).

The same commenter stated that requiring registered clearing agencies to report their clearing transactions "is not supported by an adequate consideration of factors contained in Section 3(f) of [the Exchange Act]" and provided comments that focused on the proposed rule's "considerations of efficiency and competition." [960] Specifically, this commenter believed that the proposed rule "ignores the efficiency benefits and reduced costs introduced by middleware reporting agencies," and it "needlessly and unjustifiably proposes an approach to cleared [security-based swap] reporting that imposes a burden on competition."[961] Further, the commenter expressed the view that Rule 901(a)(2)(i) would deter competition based on service quality and cost in the market for SDR services, whereas the three alternatives would encourage such competition in the same market.[962] The Commission believes that it has adequately considered the factors contained in Section 3(f) of the Exchange Act in this release and in the Regulation SBSR Proposing Release.[963] Further, the Commission has evaluated four alternative allocations of reporting obligations, including their likely effects on efficiency and competition. The Commission appreciates the commenter's concern that competition in the market for SDR services could be hindered by Rule 901(a)(2)(i) with the possible result that clearing-agency-affiliated SDRs might charge higher fees and/or offer lower quality services to their users.

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960 See Markit Letter at 3.

961 See id. at 3-4.

962 See id. at 12 (stating that "Proposed Rule 901(a)(2)(i) would deter competition for SDR and post-trade processing services and lower the utility of SDR services, since SDRs that are affiliated to clearing agencies and receive their reports for cleared SBS would no longer need to compete based on quality of service and cost, with no commensurate marginal benefit for market participants.") and 13 (stating that "these other alternatives, relative to the Proposal, encourage competition based on quality of service and cost and the rule of reporting agents and are more likely to result in outcomes whereby the same SDR will receive alpha, beta, and gamma trades").

963 See Regulation SBSR Proposed Amendments Release, 80 FR at 14779-84.

However, the Commission notes that such effects on competition, should they occur, would be limited because Rule 13n–4(c)(1)(i) under the Exchange Act[964] requires an SDR, including a clearing-agency-affiliated SDR, to ensure that any dues, fees, or other charges imposed by, and any discounts or rebates offered by, the SDR are fair and reasonable and not unreasonably discriminatory. As noted in Section XIII, supra, an affiliated SDR might offer higher quality services and/or lower fees to its participants to the extent that the affiliated SDR realizes efficiency gains from vertical integration and shares some of these gains with its participants. Further, other commenters expressed the view that requiring registered clearing agencies to report clearing transactions could enhance market efficiency and improve the accuracy of reported data. Two commenters observed that clearing agencies will be able to leverage existing reporting processes and the existing infrastructure that they have in place with market participants and vendors to report clearing transactions.[965] Another commenter observed that requiring clearing agencies to report clearing transactions in security-based swaps would be "efficient, cost effective and promote[] global data consistency," because "clearing agencies have demonstrated their ability and preference to report data for cleared transactions" under swap data reporting rules established by the CFTC and in non-U.S. jurisdictions, including the European Union and Canada.[966] One commenter agreed with the Commission's preliminary view that proposed Rule 901(a)(2)(i) was superior to alternative reporting workflows that "could require a person who does not have information about [a] clearing transaction at the time of its

964 17 CFR 240.13n–4(c)(1)(i).

965 See ICE Letter at 5 (observing that, although the same systems could be used, they would need to be modified in certain respects); LCH.Clearnet Letter at 8.

966 ISDA/SIFMA Letter at 24.

creation to report that transaction."[967] As discussed above, the Commission acknowledges that Rule 901(a)(2)(i) could place a burden on competition in the market for clearing services and the market for security-based swap data reporting. However, the Commission rejects the commenter's view that the adopted approach needlessly and unjustifiably imposes a burden on competition. As discussed above, the Commission believes that the adopted approach is appropriate because it would eliminate additional steps in the reporting process that would be needed if another market participant were assigned the duty to report a clearing transaction or if the duty were to remain unassigned. By adopting a reporting methodology with as few steps as possible, the Commission intends to minimize potential delays, discrepancies, and errors in data transmission by assigning reporting duties to the person that holds the most complete and accurate information about clearing transactions at the moment of their creation.[968]

C. Reporting by Platforms

Pursuant to new Rule 901(a)(1), a platform is required to report a security-based swap transaction executed on that platform that will be submitted to clearing.[969] With the ability to clear security-based swap transactions, it is possible for two counterparties to trade anonymously on a platform. In an anonymous trade, because neither counterparty would be aware of the name or registration status of the other, it might not be possible for either counterparty to use the reporting hierarchy in existing Rule 901(a)(2)(i) to determine who would be required to report this alpha transaction.[970] The Commission is requiring a platform to report all alpha transactions executed on the platform that will be submitted to clearing, even those that might not be

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967 Better Markets Letter at 4.

968 See supra Section XII(A).

969 See supra Section V.

970 See Regulation SBSR Proposed Amendments Release, 80 FR at 14748-49.

anonymous; this approach avoids the need for the platform and the counterparties to ascertain whether the counterparties are in fact unknown to each other.

Furthermore, the platform is the only entity at the time of execution—i.e., before the transaction is submitted for clearing—that knows the identity of both sides. Requiring the platform to report information associated with transactions that will be submitted to clearing also reduces the number of data transmission steps between execution and reporting to a registered SDR. A platform that matches orders and executes transactions will possess or can readily obtain all of the primary trade information necessary to be reported to a registered SDR, and new Rule 901(a)(1) makes it unnecessary for counterparties to report these transactions. This approach is designed to result in a more efficient reporting process for platform-executed alphas. By reducing the number of steps between the creation of transaction data and reporting to a registered SDR, Rule 901(a)(1) reduces the possibility of data discrepancies and delays.

While the level of security-based swap activity that currently takes place on platforms and is subsequently submitted for clearing is low, future rulemaking under Title VII could cause security-based swap trading volume on platforms to increase.[971] Efficiencies resulting from requiring platforms to report platform-executed alphas will increase to the extent that security-based swap trading volumes on platforms increases.

As discussed above in the context of reporting obligations for registered clearing agencies, the Commission believes that the reporting infrastructure costs associated with required reporting pursuant to the adopted amendments could represent a barrier to entry for new, smaller platforms that do not yet have the ability to report transactions to a registered SDR. To the

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971 The Commission has proposed, but not adopted, rules governing the registration and operation of SB SEFs. See SB SEF Proposing Release, 76 FR at 10948.

extent that the adopted rules and amendments might deter new trading platforms from entering the security-based swap market, this could negatively impact competition.

1. Alternative Approaches to Reporting Platform-Executed Transactions

For platform-executed transactions that are submitted to clearing but are not anonymous, an alternative would be to use the reporting hierarchy in existing Rule 901(a)(2)(ii) to assign the reporting duty. Under such an alternative, a platform would have to determine which of the trades that it executes are anonymous and which are not, which would impose additional costs on platforms.[972] It is likely that platforms would seek to pass on these costs to its participants. The Commission believes that the due diligence that platforms would have to perform under this alternative would impose unnecessary costs without enhancing the benefits of regulatory reporting. Such costs can be avoided by requiring a platform to report all platform-executed alphas, which is what adopted Rule 901(a)(2)(i) requires.

A second alternative would be to assign the reporting duty for all platform-executed alphas to the registered clearing agency to which the alphas are submitted. While the registered clearing agency would likely have the information necessary for reporting—because the clearing agency will need much of the same information about the alpha to clear it—the Commission believes that it would be more appropriate to assign the reporting duty to the platform. This approach creates a more direct flow of information from the point of execution on the platform to the registered SDR, thus minimizing opportunities for data discrepancies or delays. This approach also avoids the need for the registered clearing agency to invest resources in systems to

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[972] There could be situations where a market participant splits an order into two or more child orders and some child orders are anonymously executed while other child orders are not anonymously executed. This could further complicate separation of anonymous and non-anonymous executions.

receive data elements from platforms beyond what is already required for clearing, and to report transactions to which it is not a counterparty.

D. Reporting of Clearing Transactions Involving Allocation

In the Regulation SBSR Adopting Release, the Commission explained the application of Regulation SBSR to bunched order executions that are not submitted to clearing.[973] In the Regulation SBSR Proposed Amendments Release, the Commission discussed the application of Regulation SBSR to bunched order executions that are submitted to clearing, and the security-based swaps that result from the allocation of the bunched order if the resulting security-based swaps are cleared. In this release, the Commission discusses how the amendments to Regulation SBSR that the Commission is adopting today apply to bunched order executions that are cleared. The discussion is designed to accommodate the various workflows that market participants employ to execute and allocate bunched order alphas. This guidance does not create any new duties under Regulation SBSR but does explain the application of Regulation SBSR to events that occur as part of the allocation process.[974] Additionally, because the guidance explains how Regulation SBSR applies to a platform-executed bunched order that will be submitted to clearing—and the security-based swaps that result from the allocation of any bunched order execution, if the resulting security-based swaps are cleared—the interpretation is not likely to have consequences for efficiency, competition, or capital formation beyond those stemming from imposing reporting obligations on registered clearing agencies and platforms, as discussed above in Sections II and III, respectively.

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973 See 80 FR at 14625-27.

974 The Commission's estimates of events reportable under these amendments includes observable allocation by clearing agencies in the TIW data. Therefore, the costs associated with clearing transactions involving allocation are included in the Commission's estimate of the programmatic costs of Rules 901(a)(1) and 901(a)(2)(i).

E. Application of Regulation SBSR to Prime Brokerage Transactions

In Section VII, supra, the Commission discussed how Regulation SBSR applies to security-based swaps arising out of prime brokerage arrangements. This guidance does not create any new duties; it merely explains how a series of security-based swaps arising from a prime brokerage arrangement should be reported and publicly disseminated under Regulation SBSR. Therefore, there are no additional costs or benefits beyond those already considered in the Regulation SBSR Adopting Release.[975]

A prime brokerage arrangement involves a reallocation of counterparty risk, as the prime broker interposes itself between its client and a third-party executing dealer. Regulatory reporting of each security-based swap leg will allow the Commission and other relevant authorities to more accurately conduct market surveillance and monitor counterparty risk. As a result of public dissemination of all security-based swaps arising from a prime brokerage arrangement, market observers will have access to information regarding each leg. This could help market observers infer from these disseminated reports the fees that the prime broker charges for its credit intermediation service and separate these fees from the transaction price of the security-based swap.

F. Prohibition of Fees and Usage Restrictions for Public Dissemination

New Rule 900(tt), as adopted herein, defines the term "widely accessible"—which appears in the definition of "publicly disseminate" in existing Rule 900(cc)—to mean "widely available to users of the information on a non-fee basis." This new definition has the effect of

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975 See 80 FR 14700-704. The Commission's estimates in that release of the total number of reportable events included all security-based swap legs arising out of prime brokerage arrangements.

prohibiting a registered SDR from charging fees for or imposing usage restrictions on the security-based swap transaction data that it is required to publicly disseminate under Regulation SBSR.

Allowing free and unrestricted access to the security-based swap data that registered SDRs are required to publicly disseminate is designed to reinforce the economic effects of public dissemination generally, because market observers will be able to enjoy the benefits of public dissemination without cost and without any restriction on how they use the disseminated data. Furthermore, new Rule 900(tt) reinforces the benefits of existing Rule 903(b), which provides that a registered SDR may utilize codes in the reported or disseminated data only if the information necessary to understand the codes is free and not subject to any usage restrictions. As the Commission pointed out in the Regulation SBSR Adopting Release, Rule 903(b) could improve the efficiency of data intake by registered SDRs and data analysis by relevant authorities and other users of security-based swap data; improve efficiency by minimizing operational risks arising from inconsistent identification of persons, units of persons, products, or transactions by counterparties; and promote competition by prohibiting fee-based licensing of reference information that could create barriers to entry into the security-based swap market.[976] If the Commission did not prohibit fees and usage restrictions relating to the publicly disseminated data, a registered SDR that wished to charge (or allow others to charge) users for the information necessary to understand these UICs—but could not, because of Rule 903(b)—might seek to do so indirectly by recharacterizing the charge as being for public dissemination. Such potential action by a registered SDR could reduce the economic benefits of Rule 903(b)

976 See 80 FR at 14723.

and public dissemination generally. New Rule 900(tt) is designed in part to reinforce the economic effects, and help prevent avoidance, of Rule 903(b).

The adopted prohibition on a registered SDR charging fees for public dissemination of the regulatorily mandated security-based swap transaction data also is consistent with the CFTC's current prohibition on CFTC-registered swap data repositories charging for public dissemination of regulatorily mandated swap transaction data. Such consistency lessens the incentives for swap data repositories registered with the CFTC to enter the security-based swap market and also register with the Commission as SDRs and charge for public dissemination of security-based swap market data.[977] If the Commission did not take this approach, a CFTC-registered swap data repository could enter the security-based swap market and charge for public dissemination of security-based swap market data, and use revenues from this business to subsidize its operations in the swap market, where it is not permitted to charge for public dissemination of swap market data. If an SEC-registered SDR charges fees for security-based swap data to subsidize its reporting activity in the CFTC regime, then security-based swap market participants reporting to this SDR could face higher costs than those it would face if the SDR participated only in the security-based swap market.

The Commission recognizes that, because registered SDRs are prohibited from charging for the security-based swap data that Regulation SBSR requires them to publicly disseminate, they must obtain funds for their operating expenses through other means.[978] A registered SDR could pass the costs of publicly disseminating security-based swap data through to the persons

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

978 It is unlikely, however, in the absence of Rule 900(tt) that registered SDRs would have relied on charges for public dissemination as the sole means of funding their operations.

who report transactions to the registered SDR. Direct fees imposed on market participants would likely be in proportion to the number of transactions they execute, with more active market participants, who contribute more to the production of transaction information, paying a larger share of the cost of disseminating that information. By contrast, it would be more difficult to equitably calibrate a fee based on the consumption of the publicly disseminated data, because it would be difficult to measure the intensity of a market observer's usage of the disseminated data. As the Commission discussed in the Regulation SBSR Adopting Release, the positive effects of public dissemination on efficiency, competition, and capital formation derive from the broad based use of disseminated data by a multitude of users.[979] There are likely to be a large number of marginal users of the disseminated data who would not obtain the data if they were required to pay for it. Thus, many potential users of the data might never have the opportunity to develop new uses for the data. While a funding model relying on fees for transaction reporting could result in security-based swap market participants subsidizing other users of security-based swap market data, charging fees for the consumption of publicly disseminated data could drastically reduce the number of data users and the associated positive effects on efficiency, competition, and capital formation.

The Commission notes that new Rule 900(tt) does not prohibit a registered SDR from offering value-added security-based swap market products for sale, provided that the SDR does not make transaction information available through the value-added product sooner than it publicly disseminates each individual transaction. This requirement is designed to prevent a

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979 See 80 FR 14720-22 (explaining how efficiency, competition, and capital formation could be enhanced when market participants, market observers, debt issuers, lenders, and business owners and managers, among others, make use of publicly disseminated security-based swap data).

registered SDR from obtaining an unfair competitive advantage over other firms that might wish to sell value-added market data products. Any such products could allow market observers to enjoy the positive impacts of Regulation SBSR on efficiency, competition, and capital formation more directly, by making it easier for market observers to understand the publicly disseminated data. Even if the SDR does not make transaction information available through the value-added product sooner than it publicly disseminates each individual transaction, the SDR retains a time advantage over a competing provider of value-added data products. This time advantage is the time taken for the SDR to electronically disseminate transaction information to the public. While the SDR has such a time advantage, the competitive effect of this advantage depends in part on the nature of the value-added data product. For value-added data products whose usefulness is not highly sensitive to data transmission time, such as a summary of monthly security-based swap trading activity, the SDR's time advantage would not exert a significant negative effect on other competitors. On the other hand, for value-added products whose usefulness decreases with data transmission time, such as a product that predicts security-based swap prices or volumes over the next minute, the SDR's time advantage could have a negative effect on other competitors. Even for such products, the SDR's time advantage would be limited if there are multiple competing SDRs accepting data in the same asset class and the SDR is offering a value-added product that requires not only the data that it accepts but also the data publicly disseminated by other competing SDRs. Any time advantage that the SDR might enjoy with respect to the data that it accepts could be offset by the absence of time advantage when receiving data publicly disseminated by other competing SDRs.

G. Compliance Schedule for Regulation SBSR

The compliance schedule adopted in this release is designed to provide affected persons, especially registered SDRs and persons with a duty to report security-based swap transactions, with time to develop, test, and implement systems for carrying out their respective duties under Regulation SBSR. The new compliance schedule takes into consideration the fact that the CFTC's regulatory reporting and public dissemination rules are already in effect. As a result, several SDRs have provisionally registered and are operating in the swap market under CFTC rules, and swap market participants have developed substantial infrastructure to support swap transaction reporting. It is likely that participants in both the swap and security-based swap markets will seek to repurpose much of the infrastructure implemented in the swap market to support activities in the security-based swap market, which would enable more efficient implementation of the Commission's regime for security-based swap reporting.

Also, as discussed in Section X(C), supra, the new compliance schedule aligns Regulation SBSR compliance with security-based swap dealer registration. Thus, with respect to newly executed security-based swaps in a particular asset class, Compliance Date 1 for Rule 901 of Regulation SBSR is the first Monday that is the later of: (1) six months after the date on which the first SDR that can accept transaction reports in that asset class registers with the Commission; or (2) one month after the SBS entities registration compliance date. Every security-based swap in that asset class that is executed on or after Compliance Date 1 must be reported in accordance with Rule 901. Compliance Date 2, when public dissemination shall commence, is the first Monday that is three months after Compliance Date 1. Compliance Date 3, by which all historical security-based swaps in that asset class must be reported to a registered

SDR (to the extent that information about such transactions is available), is two months after Compliance Date 2.[980]

The proposed compliance schedule would have required affected persons to begin complying with Regulation SBSR before security-based swap dealers register with the Commission. A number of comments urged the Commission to delay Regulation SBSR compliance until after security-based swap dealers register.[981] One commenter provided extensive estimates of the costs that market participants could have incurred to develop reporting procedures for the Interim Period that likely would not have been applicable to the period after security-based swap dealer registration.[982] This commenter also pointed out that the Interim Period could create a competitive disadvantage for non-U.S. dealing entities because these entities could assume the responsibility but not the liability for reporting and thus might be less attractive to buy-side U.S. clients than U.S. dealing entities that could assume both the responsibility and liability for reporting.[983]

The Commission agrees with commenters that it would be more efficient for affected persons to focus on developing compliance procedures only for the period after security-based swap dealer registration, rather than require affected persons to expend resources to develop procedures for both the period after registration as well as for the Interim Period, because Interim

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

981 See IIB Letter at 17; ISDA I at 4, 11-13; ISDA II at 1-14; ISDA III at 1-12; SIFMA-AMG II at 6-7; WMBAA Letter at 5-6; UBS Letter at 2.

982 See ISDA III at 8-9.

983 See id at 3.

Period procedures might be inapplicable to the period after registration. The Commission believes that, by eliminating the Interim Period and thus the need to expend resources for developing interim procedures, the adopted compliance schedule will promote efficiency. The adopted compliance schedule should also promote capital formation to the extent that persons that would have incurred reporting obligations during the Interim Period could invest the resources that would otherwise be expended in developing Interim Period procedures into productive assets.

Furthermore, the Commission acknowledges the commenters' concern that the Interim Period could create competitive disparities between U.S. and foreign dealing entities if buy-side U.S. persons were less willing to transact with foreign dealing entities if certain foreign dealing entities could not assume the liability for reporting. The adopted compliance schedule avoids the need for the Interim Period and thus eliminates any potential competitive disadvantage for foreign dealing entities described by the commenters. Thus, relative to the proposed compliance schedule, the adopted compliance schedule should promote competition among U.S. and foreign dealing entities that supply liquidity to the security-based swap market.

In summary, the Commission now believes, in light of the comments received on its proposal, that it would better promote efficiency, competition, and capital formation to delay compliance with the reporting obligations of Regulation SBSR until after the SBS entities registration compliance date.

The compliance schedule adopted herein also is based on the first SDR in an asset class to register with the Commission, which could confer a "first-mover advantage."[984] The first

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984 See WMBAA Letter at 6; DTCC Letter at 12; SIFMA Letter at 17; DTCC/ICE/CME Letter at 4-5; ISDA/SIFMA Letter at 18.

registered SDR could potentially capture a significant share of the SDR market because reporting parties, uncertain as to whether or when registration of other SDRs' applications might be granted, could feel compelled to onboard with the first registered SDR to secure sufficient time to prepare for Compliance Date 1.[985] Furthermore, the first registered SDR could hold on to its share of the SDR market for long periods if reporting persons that are connected to it face high costs of switching to a different registered SDR. Thus, the first mover advantage could potentially limit competition by making it more difficult for new SDR entrants to sign on reporting clients.

The Commission acknowledges that a first mover could emerge. Nevertheless, the Commission believes that, if one SDR application satisfies the criteria of Rule 13n-1(c)(3) under the Exchange Act before any others, it would not be appropriate for the Commission to delay granting its registration because of the status of other SDR applications.[986] The Commission continues to believe that most persons that have the desire and ability to operate as SEC-registered SDRs are already operational in the swaps market as swap data repositories provisionally registered with the CFTC, and each should have a strong incentive to submit applications to register with the Commission quickly.[987] Thus, there is less likelihood of multiple applications arriving over an extended period of time, and consequently, a lower likelihood of a first mover emerging.

Even if a first mover emerges, other Commission rules are designed to minimize any potential of a monopoly advantage that the first SDR might otherwise enjoy. All SDRs, even the

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985 See DTCC Letter at 12; DTCC/ICE/CME Letter at 4-5; ISDA/SIFMA Letter at 18.

986 See supra Section X(C)(4).

987 See Regulation SBSR Proposed Amendments Release, 80 FR at 14786.

first or only registered SDR in a particular asset class, must offer fair, open, and not unreasonably discriminatory access to users of its services.[988] Moreover, any fees charged by an SDR must be fair and reasonable and not unreasonably discriminatory.[989]

The newly adopted compliance schedule could give added incentive to avoid delaying the submission of an application for registration as an SDR and to commence operation as an SEC-registered SDR as quickly as possible. This result would help the Commission and other relevant authorities obtain information about the security-based swap market for oversight purposes as quickly as possible, and also allow the public to obtain price, volume, and transaction information about all security-based swaps as quickly as possible.

As proposed in the Regulation SBSR Proposed Amendments Release, all historical security-based swaps in a particular asset class would have had to be reported to a registered SDR by proposed Compliance Date 1. As discussed in Section X(E), supra, the Commission has revised the compliance schedule to dissociate the requirement to report historical security-based swaps from Compliance Date 1. With respect to historical security-based swaps in a particular asset class, new Compliance Date 3 for the reporting of historical transactions is two months after Compliance Date 2, the date on which public dissemination commences. The Commission believes that the additional compliance delay for reporting historical security-based swaps represents an appropriate balancing of the benefits of mandatory reporting against the likely costs. Mandatory reporting of historical security-based swaps is generally less urgent than the reporting of newly executed transactions, particularly in light of the fact that most security-based swaps in the credit derivative asset class are already being reported on a voluntary basis to TIW.

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988 See Rule 13n-4(c)(1)(iii) under the Exchange Act, 17 CFR 240.13n-4(c)(1)(iii).

989 See Rule 13n-4(c)(1)(i) under the Exchange Act, 17 CFR 240.13n-4(c)(1)(i).

Because only available information about historical transactions must be reported, the Commission does not anticipate that reports of historical transactions made to registered SDRs will be significantly more informative than the reports already available through TIW.

Several commenters were concerned that requiring reporting pursuant to Regulation SBSR to begin before the Commission has made substituted compliance determinations "would impose significant and unnecessary burdens" on non-U.S. registered persons. Changes made by non-U.S. persons to their reporting infrastructure to comply with Regulation SBSR may not be necessary, in the commenters' views, if the Commission subsequently grants substituted compliance to these non-U.S. persons.[990] The Commission acknowledges the commenters' concern regarding burdens that may arise if compliance with Regulation SBSR precedes substituted compliance determinations. However, as discussed in Section X(C)(5), supra, the Commission does not believe that it is appropriate to defer compliance with Regulation SBSR until after the Commission makes one or more substituted compliance determinations. The Commission understands that changes made by non-U.S. persons to their reporting infrastructure to comply with Regulation SBSR might become unnecessary if substituted compliance is granted. However, these changes could be limited to the extent that the Commission and other jurisdictions require the collection and reporting of similar transaction information.

H. Amendments Related to Cross-Border Transactions

The amendments to Rules 901 and 908 adopted today will, among other things, apply Regulation SBSR's regulatory reporting and public dissemination requirements to all security-based swap transactions of a foreign dealing entity that are arranged, negotiated, or executed by U.S. personnel. Such ANE transactions are already subject to regulatory reporting and public

990 See ISDA I at 15; ISDA/SIFMA Letter at 19; SIFMA/FSR Letter at 15.

dissemination if the other side includes a U.S. person. The amendments adopted today extend the regulatory reporting and public dissemination requirement to all ANE transactions, even if the other side is non-U.S. and not engaging in ANE activity. These amendments also for the first time assign the duty to report transactions between unregistered U.S. persons and unregistered non-U.S. persons. These amendments will have several effects on efficiency, competition, and capital formation in the U.S. financial market.

1. Competition

These amendments to Rules 901 and 908 will have implications for competition among market participants that intermediate transactions in security-based swaps as well as counterparties to security-based swaps. These amendments are designed to promote competition among liquidity providers in the security-based swap market by imposing consistent reporting and public dissemination requirements on both U.S. and foreign dealing entities, when the latter are engaging in ANE activity. If only U.S. dealing entities were subject to regulatory reporting and public dissemination requirements, the costs of these requirements would primarily affect U.S. dealing entities, their agents, and their counterparties. In contrast, foreign dealing entities and their agents, who might not be subject to comparable requirements in their home jurisdictions, could have a competitive advantage over U.S. dealing entities in serving unregistered non-U.S. counterparties using personnel located in a U.S. branch or office, were their activities not subject to the same requirements.[991]

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991 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 unregulated banks than when regulations apply equally to all competitors).

These amendments to Rules 901 and 908 also are designed to promote competition between U.S. persons and non-U.S. persons that trade with foreign dealing entities, when a foreign dealing entity is utilizing U.S. personnel. A transaction between an unregistered foreign dealing entity engaging in ANE activity and a U.S. counterparty already is subject to regulatory reporting and public dissemination under existing Rule 908(a)(1)(i). In the absence of newly adopted Rules 901(a)(2)(ii)(E)(2) and (3), however, no one would be assigned to report such a transaction. Furthermore, in the absence of new Rule 908(b)(5), an unregistered foreign dealing entity engaged in an ANE transaction would not be subject to Regulation SBSR. This could create a competitive advantage for non-U.S. persons over similarly situated U.S. persons when they trade with foreign dealing entities. An unregistered foreign dealing entity might be able offer liquidity to a non-U.S. person at a lower price than to the U.S. person because the foreign dealing entity would not have to embed the potential costs of regulatory reporting and public dissemination into the price offered to the non-U.S. person. By contrast, the price offered by the unregistered foreign dealing entity to the U.S. person would likely reflect these additional costs, to the extent that public dissemination of a particular transaction imposes costs on the counterparties.[992] While the benefit of lower prices obtained by non-U.S. persons would depend on the magnitude of the perceived costs of public dissemination, the Commission believes that it is appropriate to place the transactions of U.S. persons and non-U.S. persons on a more equal footing, so that non-U.S. persons do not have a competitive advantage over U.S. persons when

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992 This effect would be diminished to the extent that a transaction of a foreign dealing entity is subject to public dissemination requirements under the rules of a foreign jurisdiction, and the costs of public dissemination are already factored into the prices offered to its counterparties.

engaging in security-based swap transactions that, due to the involvement of U.S. personnel of the foreign dealing entity, exist at least in part within the United States.

The amendments to Rules 901 and 908 adopted herein also apply consistent regulatory reporting and public dissemination requirements to transactions between unregistered non-U.S. persons that are platform-executed or effected by or through registered broker-dealers. Because there will be very few such transactions, the Commission believes that the application of regulatory requirements is unlikely to generate competitive frictions between these different types of providers of intermediation services.[993]

As discussed in Section XII(B)(1)(2), supra, unregistered U.S. persons likely will seek to avoid the costs of assessing whether a foreign counterparty is engaging in ANE activity by choosing to transact only with registered entities for which assessment is not required. To the extent that unregistered U.S. persons avoid transacting with unregistered foreign dealing entities engaging in ANE activity in favor of transacting with registered entities, these foreign dealing entities could be at a competitive disadvantage when competing with registered entities to provide liquidity to unregistered U.S. persons. However, this competitive disadvantage could be limited if unregistered foreign dealing entities readily provide information on their use of U.S. personnel to unregistered U.S. persons who are potential counterparties, thereby obviating the need for the U.S. persons to conduct an assessment. Further, the competitive disadvantage could be eliminated entirely if a foreign dealing entity registers with the Commission as a security-based swap dealer. An unregistered foreign dealing entity that remains below the de minimis threshold may seek to register as a security-based swap dealer if the benefits from providing

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993 See U.S. Activity Proposal, 80 FR at 27501.

liquidity to unregistered U.S. persons are sufficient to justify the costs associated with dealer registration.

2. Efficiency

The Regulation SBSR Adopting Release did not address when an uncleared security-based swap involving only unregistered non-U.S. persons would be subject to regulatory reporting and/or public dissemination. The amendments to Rules 901 and 908 adopted herein, by requiring the public dissemination of ANE transactions, including those that are uncleared security-based swaps involving only unregistered non-U.S. persons, will increase price competition and price efficiency in the security-based swap market generally,[994] and enable all market participants to have more comprehensive information with which to make trading and valuation determinations for security-based swaps and related and underlying assets. The reporting of all ANE transactions to a registered SDR should enhance the Commission's ability to oversee security-based swap activity occurring within the United States and to monitor for compliance with specific Title VII requirements (including the requirement that a person register with the Commission as a security-based swap dealer if it exceeds the de minimis threshold). The reporting of these transactions likely will enhance the Commission's ability to monitor for manipulative and abusive practices involving security-based swap transactions or transactions in related underlying assets, such as corporate bonds or other securities transactions that result from dealing activity, or other relevant activity, in the U.S. market. The knowledge that the Commission and other relevant authorities are able to conduct surveillance on the basis of regulatory reporting could encourage greater participation in the security-based swap market since surveillance and the resulting increased probability of detection may deter potential market

994 See Regulation SBSR Adopting Release, 80 FR at 14720-21.

abuse. This could result in improved efficiency, due to the availability of more risk-sharing opportunities between market participants.

The Commission acknowledges the risk that, in response to the adopted amendments, foreign dealing entities, trading platforms, and/or registered broker-dealers could restructure their operations to avoid triggering requirements under Regulation SBSR. For example, a foreign dealing entity could restrict its U.S. personnel from intermediating transactions with non-U.S. persons, a trading platform might choose to move its principal place of business offshore, or a registered broker-dealer might cease to effect transactions in security-based swaps between unregistered non-U.S. persons. Such restructurings, if they occurred, could have an adverse effect on the efficiency of the security-based swap market by fragmenting liquidity between a U.S. security-based swap market—occupied by U.S. persons and non-U.S. persons willing to participate within the Title VII regulatory framework, with intermediation services provided by registered broker-dealers and U.S.-based trading platforms—and an offshore market in which participants seek to avoid any activity that could trigger application of Title VII to their security-based swap activity.[995] Such market fragmentation could reduce the amount of liquidity available to market participants whose activity is regulated by Title VII, increase their search costs, or erode any gains in price efficiency and allocative efficiency that might otherwise result from regulatory reporting and public dissemination of all security-based swap transactions that exist at least in part within the United States. If foreign dealing entities use only agents who are located outside the United States, there could be reduced competition in the market for security-based swap intermediation services and this smaller pool of competitors could in turn charge higher prices for intermediation. The result would be higher costs of searching for suitable

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995 See Cross-Border Adopting Release, 79 FR at 47364.

counterparties. Higher search costs could in turn reduce the number of risk-sharing trades that foreign dealing entities execute and thus adversely affect risk-sharing efficiency in the security-based swap market broadly.

The Commission has already considered the likelihood that foreign dealing entities will cease using U.S. personnel to avoid Title VII requirements (such as security-based swap dealer registration).[996] The Commission continues to believe that market fragmentation that results from relocation of personnel is less likely because foreign dealing entities that elect to use such a strategy to avoid regulatory reporting requirements under Title VII also would bear the costs of restructuring their operations and potentially forgoing the benefits of access to local expertise in security-based swaps that are traded in the U.S. market.[997] Furthermore, the Commission believes that the amendments adopted herein, by extending Regulation SBSR to a small set of ANE transactions involving only non-U.S. persons and assigning the duty for reporting them, will impose only marginal burdens on platforms and registered broker-dealers.

3. Capital Formation

The amendments adopted herein could affect capital formation by affecting the transparency, liquidity, and stability of the market in which issuers seek capital. In the Regulation SBSR Adopting Release, the Commission identified benefits associated with the regulatory reporting and public dissemination of security-based swaps, such as increased transparency, improved liquidity, and greater market stability.[998] The Regulation SBSR Adopting Release did not impose any requirements on transactions between unregistered non-

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996 See U.S. Activity Adopting Release, 81 FR at 8629-30.

997 See id. at 8633.

998 See 80 FR at 14719-22.

U.S. persons, even if one side was engaging in ANE activity. The amendments adopted in this release, by extending Regulation SBSR to all ANE transactions, should extend the benefits of regulatory reporting and public dissemination to all ANE transactions, which in turn could lead to more efficient allocation of capital by market participants and market observers.

The Commission recognizes that the amendments to Rules 901 and 908 adopted herein could impede capital formation by fragmenting the security-based swap market. As discussed in Section XIII(H)(2), supra, fragmentation of the security-based swap market could occur if market participants restructure their business activities by moving their personnel and operations offshore or restrict the counterparties to whom such persons may provide services. Such actions could impede capital formation because resources that market participants expend to restructure would not be available for investing in productive assets. Furthermore, fragmentation could create two separate security-based swap markets: a U.S. security-based swap market and an off-shore security-based swap market.[999] If fragmentation reduces the pool of market participants in the U.S. market, the market could experience lower trading activity and liquidity which in turn could reduce the ability of U.S. market participants to hedge financial and commercial risks and force them to put more resources into precautionary savings instead of investing those resources into productive assets.

However, as the Commission noted in Section XIII(H)(2), supra, the amendments adopted herein, by extending Regulation SBSR to all ANE transactions, will impose only marginal burdens on foreign dealing entities. The Commission does not believe that these limited burdens will cause foreign dealing entities to restructure their operations and fragment the security-based swap market such that capital formation would be adversely affected.

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[999] See id.

XIV. 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,[1000] 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."[1001] Section 605(b) of the RFA[1002] 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;[1003] 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,[1004] or, if not required to file such statements, a broker-dealer with total

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1000 5 U.S.C. 603(a).

1001 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 of 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).

1002 5 U.S.C. 605(b).

1003 See 17 CFR 240.0-10(a).

1004 17 CFR 240.17a-5(d).

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.[1005] Under the standards adopted by the Small Business Administration, small entities in the finance and insurance industry include the following: (1) For entities engaged in credit intermediation and related activities,[1006] entities with $550 million or less in assets; (2) for non-depository credit intermediation and certain other activities,[1007] entities engaged in non-depository credit intermediation and related activities, $38.5 million or less in annual receipts; (3) for entities engaged in financial investments and related activities,[1008] entities with $38.5 million or less in annual receipts; (4) for insurance carriers and entities engaged in related activities,[1009] entities with $38.5 million or less in annual receipts, or 1,500 employees for direct

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1005 See 17 CFR 240.0-10(c).

1006 Including commercial banks, savings institutions, credit unions, firms involved in other depository credit intermediation, credit card issuing, sales financing, consumer lending, real estate credit, and international trade financing. See 13 CFR 121.201 at Subsector 522.

1007 Including firms involved in secondary market financing, all other non-depository credit intermediation, mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearing house activities, and other activities related to credit intermediation. See 13 CFR 121.201 at Subsector 522.

1008 Including firms involved in investment banking and securities dealing, securities brokerage, commodity contracts dealing, commodity contracts brokerage, securities and commodity exchanges, miscellaneous intermediation, portfolio management, providing investment advice, trust, fiduciary and custody activities, and miscellaneous financial investment activities. See 13 CFR 121.201 at Subsector 523.

1009 Including direct life insurance carriers, direct health and medical insurance carriers, direct property and casualty insurance carriers, direct title insurance carriers, other direct insurance (except life, health and medical) carriers, reinsurance carriers, insurance agencies and brokerages, claims adjusting, third party administration of insurance and pension funds, and all other insurance related activities. See 13 CFR 121.201 at Subsector 524.

property and casualty insurance carriers; and (5) for funds, trusts, and other financial vehicles,[1010] entities with $32.5 million or less in annual receipts.

In the U.S. Activity Proposal, the Commission stated its belief that the majority of the amendments to Regulation SBSR proposed in that release would not have a significant economic impact on a substantial number of small entities for the purposes of the RFA.[1011] However, the Commission acknowledged that the proposed amendments would require a registered broker-dealer (including a registered SB SEF) to report a security-based swap transaction that is effected by or through it.[1012] The Commission further estimated that 30 registered broker-dealers (including SB SEFs) could be required to report such transactions, although the Commission was not able to estimate the number of those registered broker-dealers that would be "small entities."[1013] As a result, the Commission stated its preliminary belief that it is unlikely that these registered broker-dealers would be small entities and requested comment on the number of registered broker-dealers that are small entities that would be impacted by the proposed amendments, including any available empirical data.[1014]

In the Regulation SBSR Proposed Amendments Release, the Commission certified that the amendments proposed in that release would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.[1015] The Commission believes,

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1010 Including pension funds, health and welfare funds, other insurance funds, open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts and other financial vehicles. See 13 CFR 121.201 at Subsector 525.

1011 See 80 FR at 27509.

1012 See id.

1013 See id.

1014 See id.

1015 See 80 FR at 14801.

based on input from security-based swap market participants and its own information, that the majority of security-based swap transactions have at least one counterparty that is either a security-based swap dealer or major security-based swap participant, and that these entities—whether registered broker-dealers or not—would exceed the thresholds defining "small entities" set out above. The Commission continues to believe that the vast majority of, if not all, security-based swap transactions are between large entities for purposes of the RFA.

In addition, the Commission believes that persons that are likely to register as SDRs would not be small entities. Based on input from security-based swap market participants and its own information, the Commission continues to believe that most if not all registered SDRs will be part of large business entities, and that all registered SDRs will have assets in excess of the thresholds discussed above. Therefore, the Commission continues to believe that no registered SDRs will be small entities.

The Commission received no comments on the certification in the Regulation SBSR Proposed Amendments Release or, as indicated above, the Initial Regulatory Flexibility Analysis in the U.S. Activity Proposal. Accordingly, the Commission hereby certifies that the final rules adopted in this release will not have a significant impact on a substantial number of small entities for the purposes of the RFA.

XV. Statutory Basis 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) thereof, 15 U.S.C. §§ 78c-3(e), 78k-1(b), 78m(m)(1), 78m-1(a), 78w(a)(1), 78dd(c), and 78mm(a), the Commission is amending Rules 900, 901, 902, 905, 906, 907, and 908 of Regulation SBSR under the Exchange Act, 17 CFR 242.900, 242.901, 242.902, 242.905, 242.906, 242.907, and 242.908.

List of Subjects in 17 CFR Part 242

Brokers, Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, and as amended elsewhere in this issue of the Federal Register, the Commission amends 17 CFR part 242 as follows:

PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

1. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k-l(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd-1, 78mm, 80a-23, 80a-29, and 80a-37, unless otherwise noted.

2. In § 242.900, revise paragraph (u) and add paragraph (tt) to read as follows:

Regulation SBSR--Regulatory Reporting and Public Dissemination of Security-Based Swap Information

§ 242.900 Definitions.

* * * * *

(u) Participant, with respect to a registered security-based swap data repository, means:

(1) A counterparty, that meets the criteria of § 242.908(b), of a security-based swap that is reported to that registered security-based swap data repository to satisfy an obligation under § 242.901(a);

(2) A platform that reports a security-based swap to that registered security-based swap data repository to satisfy an obligation under § 242.901(a);

(3) A registered clearing agency that is required to report to that registered security-based swap data repository whether or not it has accepted a security-based swap for clearing pursuant to § 242.901(e)(1)(ii); or

(4) A registered broker-dealer (including a registered security-based swap execution facility) that is required to report a security-based swap to that registered security-based swap data repository by § 242.901(a).

* * * * *

(tt) Widely accessible, as used in paragraph (cc) of this section, means widely available to users of the information on a non-fee basis.

3. In § 242.901 add paragraphs (a)(1), (a)(2)(i), (a)(2)(ii)(E)(2) through (4), (a)(3), and (e)(1)(ii) and revise paragraphs (d)(4), (d)(9), (e)(2) and (h) to read as follows:

§ 242.901 Reporting obligations.

(a) * * *

(1) Platform-executed security-based swaps that will be submitted to clearing. If a security-based swap is executed on a platform and will be submitted to clearing, the platform on which the transaction was executed shall report to a registered security-based swap data repository the counterparty ID or the execution agent ID of each direct counterparty, as applicable, and the information set forth in §§ 242.901(c) (except that, with respect to § 242.901(c)(5), the platform need indicate only if both direct counterparties are registered security-based swap dealers), 901(d)(9), and 901(d)(10).

(2) * * *

(i) Clearing transactions. For a clearing transaction, the reporting side is the registered clearing agency that is a counterparty to the transaction.

* * * * *

(ii) * * *

(E) * * *

(2) If one side includes a non-U.S. person that falls within § 242.908(b)(5) or a U.S. person and the other side includes a non-U.S. person that falls within § 242.908(b)(5), the sides shall select the reporting side.

(3) If one side includes only non-U.S. persons that do not fall within § 242.908(b)(5) and the other side includes a non-U.S. person that falls within § 242.908(b)(5) or a U.S. person, the side including a non-U.S. person that falls within § 242.908(b)(5) or a U.S. person shall be the reporting side.

(4) If neither side includes a U.S. person and neither side includes a non-U.S. person that falls within § 242.908(b)(5) but the security-based swap is effected by or through a registered broker-dealer (including a registered security-based swap execution facility), the registered broker-dealer (including a registered security-based swap execution facility) shall report the counterparty ID or the execution agent ID of each direct counterparty, as applicable, and the information set forth in §§ 242.901(c) (except that, with respect to § 242.901(c)(5), the registered broker-dealer (including a registered security-based swap execution facility) need indicate only if both direct counterparties are registered security-based swap dealers), 901(d)(9), and 901(d)(10).

(3) Notification to registered clearing agency. A person who, under § 242.901(a)(1) or § 242.901(a)(2)(ii), has a duty to report a security-based swap that has been submitted to clearing at a registered clearing agency shall promptly provide that registered clearing agency with the transaction ID of the submitted security-based swap and the identity of the registered security-based swap data repository to which the transaction will be reported or has been reported.

* * * * *

(d) * * *

(4) For a security-based swap that is not a clearing transaction and that will not be allocated after execution, the title and date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract;

* * * * *

(9) The platform ID, if applicable, or if a registered broker-dealer (including a registered security-based swap execution facility) is required to report the security-based swap by § 242.901(a)(2)(ii)(E)(4), the broker ID of that registered broker-dealer (including a registered security-based swap execution facility);

(e) * * *

(1) * * *

(ii) Acceptance for clearing. A registered clearing agency shall report whether or not it has accepted a security-based swap for clearing.

(2) All reports of life cycle events and adjustments due to life cycle events shall, within the timeframe specified in paragraph (j) of this section, be reported to the entity to which the original security-based swap transaction will be reported or has been reported and shall include the transaction ID of the original transaction.

* * * * *

(h) Format of reported information. A person having a duty to report shall electronically transmit the information required under this section in a format required by the registered security-based swap data repository to which it reports.

* * * * *

4. In § 242.902, revise paragraphs (c)(6) and (c)(7) and add paragraph (c)(8) to read as follows:

§ 242.902 Public dissemination of transaction reports.

* * * * *

(c) * * *

(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;

(7) Any information regarding the allocation of a security-based swap; or

(8) Any information regarding a security-based swap that has been rejected from clearing or rejected by a prime broker if the original transaction report has not yet been publicly disseminated.

* * * * *

5. In § 242.905, revise paragraph (a) to read as follows:

§ 242.905 Correction of errors in security-based swap information.

(a) Duty to correct. Any counterparty or other person having a duty to report a security-based swap that discovers an error in information previously reported pursuant to §§ 242.900 through 242.909 shall correct such error in accordance with the following procedures:

(1) If a person that was not the reporting side for a security-based swap transaction discovers an error in the information reported with respect to such security-based swap, that person shall promptly notify the person having the duty to report the security-based swap of the error; and

(2) If the person having the duty to report a security-based swap transaction discovers an error in the information reported with respect to a security-based swap, or receives notification from a counterparty of an error, such person shall promptly submit to the entity to which the security-based swap was originally reported an amended report pertaining to the original transaction report. If the person having the duty to report reported the initial transaction to a registered security-based swap data repository, such person shall submit an amended report to the registered security-based swap data repository in a manner consistent with the policies and procedures contemplated by § 242.907(a)(3).

* * * * *

6. Revise § 242.906 to read as follows:

§ 242.906 Other duties of participants.

(a) Identifying missing UIC information. A registered security-based swap data repository shall identify any security-based swap reported to it for which the registered security-based swap data repository does not have the counterparty ID and (if applicable) the broker ID, branch ID, execution agent ID, trading desk ID, and trader ID of each direct counterparty. Once a day, the registered security-based swap data repository shall send a report to each participant of the registered security-based swap data repository or, if applicable, an execution agent, identifying, for each security-based swap to which 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, trading desk ID, and trader ID. A participant of a registered security-based swap data repository that receives such a report shall provide the missing information with respect to its side of each security-based swap referenced in the report to the registered security-based swap data repository within 24 hours.

(b) Duty to provide ultimate parent and affiliate information. Each participant of a registered security-based swap data repository that is not a platform, a registered clearing agency, an externally managed investment vehicle, or a registered broker-dealer (including a registered security-based swap execution facility) that becomes a participant solely as a result of making a report to satisfy an obligation under § 242.901(a)(2)(ii)(E)(4) shall provide to the registered security-based swap data repository information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered security-based swap data repository, using ultimate parent IDs and counterparty IDs. Any such participant shall promptly notify the registered security-based swap data repository of any changes to that information.

(c) Policies and procedures to support reporting compliance. Each participant of a registered security-based swap data repository that is a registered security-based swap dealer, registered major security-based swap participant, registered clearing agency, platform, or registered broker-dealer (including a registered security-based swap execution facility) that becomes a participant solely as a result of making a report to satisfy an obligation under § 242.901(a)(2)(ii)(E)(4) shall establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with any obligations to report information to a registered security-based swap data repository in a manner consistent with §§ 242.900 through 242.909. Each such participant shall review and update its policies and procedures at least annually.

7. In § 242.907, revise paragraph (a)(6) to read as follows:

§ 242.907 Policies and procedures of registered security-based swap data repositories.

(a) * * *

(6) For periodically obtaining from each participant other than a platform, registered clearing agency, externally managed investment vehicle, or registered broker-dealer (including a registered security-based swap execution facility) that becomes a participant solely as a result of making a report to satisfy an obligation under § 242.901(a)(2)(ii)(E)(4) information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and counterparty IDs.

* * * * *

8. In § 242.908, revise paragraph (a)(1)(i) to delete the "or" at the end of the paragraph, revise paragraph (a)(1)(ii) to replace the period at the end of paragraph with a semi-colon, and revise paragraphs (b)(1) and (2) and add paragraphs (a)(1)(iii) through (v) and (b)(3) through (5) to read as follows:

§ 242.908 Cross-border matters

(a) * * *

(1) * * *

(iii) The security-based swap is executed on a platform having its principal place of business in the United States;

(iv) The security-based swap is effected by or through a registered broker-dealer (including a registered security-based swap execution facility); or

(v) The transaction is connected with a non-U.S. person's security-based swap dealing activity and is arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office.

* * * * *

(b) * * *

(1) A U.S. person;

(2) A registered security-based swap dealer or registered major security-based swap participant;

(3) A platform;

(4) A registered clearing agency; or

(5) A non-U.S. person that, in connection with such person's security-based swap dealing activity, arranged, negotiated, or executed the security-based swap using its personnel located in a U.S. branch or office, or using personnel of an agent located in a U.S. branch or office.

* * * * *

By the Commission.

Jill M. Peterson
Assistant Secretary

Dated: July 14, 2016