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United States

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-File No. S7-34-10
-Regulation SBSR – Reporting and Dissemination of Security-Based Swap
Information

Dear Sir.

Thank you for giving us the opportunity to comment on your proposed rules "Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information".

I would first comment that the proposed rules should be similar to rules proposed by the Commodity Futures Trading Commission for non-security-based swaps[1]. I would suggest that there is little rationale for proposing very different rules, and I would recommend that the SEC and the CFTC should work more closely together to propose one set of robust rules regarding reporting of swap data. This will reduce complexity, and is in itself a strong signal to the markets that regulators are seen to work more closely together, rather than within their individual silos.

I generally support the proposed rules. The proposed Regulation SBSR consists of Rules 900 to 911 under the Securities Exchange Act of 1934, as amended (Exchange Act). These rules comprise two main parts:

- the parties to a security-based swap (SBS) transaction must report certain information to a registered SBS data repository (SDR), or to the SEC if no SDR will accept the information
- the registered SDR must publicly disseminate, in real time, specified information concerning transactions, volumes and pricing information for such trades. Other regulatory information must be reported in a reasonable time

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[1] Outline rules released as Fact Sheets and Q&As.

I support the proposed definition of "real time" to mean "…as soon as technologically practicable, but in no event later than 15 minutes after the time of execution of the SBS…", and the proposed definition of "time of execution" to mean "…the point at which the counterparties to a SBS become irrevocably bound under applicable law". Furthermore I agree that orally negotiated SBS transactions should be systematised as quickly as possible and reported in real time. I also support that regulatory information must be reported within a reasonable time following the time of execution.

In response to your specific requests for comment I would add the following:

2. I agree with the SEC's approach of assigning the responsibility to report to a counterparty, while allowing the counterparty to have an agent (such as a SB SEF) act on its behalf.
3. Yes, I would expect that many reporting parties would employ agents. I do not see what steps the SEC could take to encourage this, or even why it should take a stance on this issue.
4. Yes, the obligations assigned in proposed Rule 901(a) are sufficiently clear and complete.
5, 6. The SEC should be pragmatic here, perhaps adopting a default mechanism to allocate the reporting obligation, subject to override from the counterparties where desired.
7. Yes, I agree with the SEC's proposed approach for reporting for SBSs where only one counterparty is a U.S. person.
8. Yes, I agree in principle with the SEC's proposed approach for reporting for SBSs where neither counterparty is a U.S. person.
13 and generally. I agree with the proposed categories of information that would be required to be reported in real time for public dissemination. The SEC has adopted a pragmatic approach here with respect to the main categories of information describing the SBS and the transaction. The information should be complete and sufficient so that its dissemination will enhance transparency and price discovery and thus aid market liquidity.
18. I agree that it would be feasible, and necessary to require SBSs agreed to by phone to be entered into an electronic system that assigns a time stamp.
19. The time of execution should be reported at least to the second, and by finer increment where practicable.
26, 27. Correct interpretations would require judgement here. I agree with the pragmatic approach proposed by the SEC.
31 and generally. I agree with the proposed definition of "real time".
32, 33, 34, 35. The shortest practicable time frame should be required.
37 and generally. I agree with the information that the SEC has proposed to be required to be reported pursuant to proposed Rule 901(d).
39. I am not convinced that the SEC should also require reporting of the purpose of the SBS transaction (such as market making, directional trade, or asset hedge).
51 and generally. I agree that a UIC should be assigned by an internationally recognised standards-setting body that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory. The definition of UIC should also provide that, if no standards-setting body meets these criteria, a registered SDR would be required to assign all necessary UICs using its own methodology.
57. Yes, there should be different reporting times based on whether a SBS is executed or confirmed manually or electronically. Reporting times should be as soon as technologically and practically feasible.
58, 59, 60, 61. Timeframes should be as soon as technologically and practically feasible.
62. No, public dissemination of information in the proposed timeframes should not materially reduce market liquidity.

64, 66. I agree with the proposed definition of life cycle event, which is clear, sufficient and complete.

68. Yes, life cycle events should be reported promptly.

69. Yes, it would be feasible for a registered SDR to time stamp, to the second, information that would be submitted pursuant to proposed Rule 901.

70, 71, 74. Yes, agreed.

84, 86. The registered SDR should have the flexibility to specify acceptable data formats, connectivity requirements, and other protocols for submitting information. I believe in substance over form here.

87. Yes, this is reasonable. I believe in substance over form here.

90. It is reasonable for information necessary to interpret these codes to be widely available on a non-fee basis. Otherwise confusion will develop for confusion's sake.

92. This is a reasonable compromise.

96 and generally. Post-trade transparency is almost as important as pre-trade transparency. I would recommend full post-trade transparency, as soon as technologically and practically feasible, but with an exemption allowing delayed reporting for block trades. Even end of day reporting would provide valuable information concerning transactions and positions, and sources of market liquidity.

105. Yes, requiring registered SDRs to disseminate SBS information would be an effective means of dissemination.

106, 107. I believe that a consolidated data feed would become necessary, and that the SEC should require it now.

109. Yes, this is a reasonable compromise.

111. See my response to 96.

112. Naturally, participants could trade off the block trade's interest. This is one reason for supporting a reasonable delay.

115. Yes, but this is an organic area, and the actual thresholds could change over time.

116, 117, 121, 122, 127, 133. This is an evolving area, and I would support a principles-based approach here, rather than fixed rules.

123. Yes, see my previous responses.

136. Through thorough time-based analysis, potentially yes, although I cannot envisage this now.

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

139,140. I would support a principles-based approach here.

141. Yes, the proposed obligations for submitting error reports are sufficiently clear.

142. No additional requirements are necessary.

143. I agree with the proposed approach.

144. Yes, error reports should be publicly disseminated. This will increase confidence in the integrity of markets. The public must believe in openness and transparency here.

145, 146. I agree with the proposed policies and procedures for registered SDRs.

147. A registered SDR should have flexibility to specify acceptable data formats, connectivity requirements, and other protocols for submitting information.

148. All acceptable data formats should be open-source structured data formats.

149. A registered SDR should have the flexibility to determine and apply special indicators.

150, 153, 154. This is an evolving area, and I would support a principles-based approach here.

158, 159. This is a necessary part of risk governance and compliance.

160. I have no concerns with market participants' access to data disseminated by registered SDRs.

161. Yes, a SDR would clearly be a Securities Information Processor.

166. Yes, market participants other than a registered SDR should be prohibited from distributing their SBS market data before transactions are disseminated by a registered SDR, in order to stop the potential for developing a two-tier market.

168. By definition yes. However I do not consider this to be a problem here.

170. No.

171. 15 minutes is an appropriate length to restrict market participants other than registered SDRs from disseminating SBS transaction data.

172. In this case, yes.

173 - 182, 186. I agree with the phased approach proposed by the SEC, and the timeframes therein. I also agree that the obligations applicable to the stated parties are clear, sufficient and achievable.

183, 184, 185. The suggested numbers of SBSs are reasonable. The main criteria for selecting SBSs would be trading volume, standardisation and liquidity considerations.

188. Yes, I agree with the requirements of proposed Rule 911. These are sufficient to stop the arbitrary evasion of reporting.

190, 193. I agree with the proposal to exempt SBSs from Section 31 fees. This is an appropriate compromise, and would create a more level playing field among SBS market participants.

201 and generally. I agree with the proposed collection of information. There will be a corresponding burden on entities, but this should be manageable. I commend the SEC on its clear and detailed burden estimates. I further commend the SEC on its complete and reasonable analyses of costs and benefits.

Yours faithfully

Chris Barnard