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SEC Adopts Rules Regarding Reporting and Dissemination of Security-Based Swap Information and Proposes Further Amendments to the Reporting Rules

On February 11, 2015, the U.S. Securities and Exchange Commission (“SEC”) adopted final rules regarding the regulatory reporting and public dissemination of security-based swap (“SBS”) information (“**Final SEC Reporting Rules**”) under the Securities Exchange Act of 1934 (“**Exchange Act**”).¹ The rules were issued pursuant to Sections 763 and 766 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“**Dodd-Frank Act**”). The Final SEC Reporting Rules are based on a December 2010 proposal and a May 2013 re-proposal (together, “**Proposed SEC Rules**”).² At the same time, the SEC also proposed additional rules, rule amendments, and guidance (“**Proposed SEC Amendments**”) that would address, among other matters, the duties of certain reporting parties and security-based swap data repositories (“**SB SDRs**”) and an interim compliance schedule for certain provisions of the Final SEC Reporting Rules.³ In another release, the SEC also finalized rules regarding SB SDR registration, duties, and core principles (“**Regulation SB SDR**”).⁴

Like the Proposed SEC Rules, the Final SEC Reporting Rules will require a comprehensive range of SBS transaction data to be reported to an SB SDR (“**regulatory reporting**”) and a subset of that data to be disseminated to the public (“**public dissemination**”). In adopting final rules, the SEC has taken into account the swap reporting rules (“**Final CFTC**

¹ See Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, Release No. 34-74244 (Feb. 11, 2015), 80 Fed. Reg. 14564 (Mar. 19, 2015), available at: <http://www.gpo.gov/fdsys/pkg/FR-2015-03-19/pdf/2015-03124.pdf>.

² See Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. 75208 (Dec. 2, 2010), available at: <http://www.gpo.gov/fdsys/pkg/FR-2010-12-02/pdf/2010-29710.pdf>; Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, 78 Fed. Reg. 30968 (May 23, 2013) (“**SEC Cross-Border Proposal**”), available at: <http://www.gpo.gov/fdsys/pkg/FR-2013-05-23/pdf/2013-10835.pdf>. The SEC adopted a portion of the SEC Cross-Border Proposal in June 2014, but did not address the SBS reporting rules at that time. See Application of the “Security-Based Swap Dealer” and “Major Security-Based Swap Participant” Definitions to Cross-Border Security-Based Swap Activities, 79 Fed. Reg. 47278 (Aug. 12, 2014) (“**Final SEC Cross-Border Rules**”), available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-08-12/pdf/R1-2014-15337.pdf>.

³ See Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, Release No. 34-74245 (Feb. 11, 2015), 80 Fed. Reg. 14740 (Mar. 19, 2015), available at: <http://www.gpo.gov/fdsys/pkg/FR-2015-03-19/pdf/2015-03125.pdf>. Comments are due on this proposal on or before May 4, 2015.

⁴ See Security-Based Swap Data Repository Registration, Duties, and Core Principles, Release No. 34-74246 (Feb. 11, 2015), 80 Fed. Reg. 14438 (Mar. 19, 2015), available at: <http://www.gpo.gov/fdsys/pkg/FR-2015-03-19/pdf/2015-03127.pdf>. This alert does not address Regulation SB SDR, except in certain cases where it relates to Regulation SBSR (defined below).

Reporting Rules”) adopted by the U.S. Commodity Futures Trading Commission (“**CFTC**”).⁵ In some cases, the SEC has sought to harmonize its approach with that of the CFTC. Despite these efforts, however, enough differences exist between the Final CFTC Reporting Rules and the Final SEC Reporting Rules that firms will likely need to make significant modifications to their existing reporting systems to comply with the Final SEC Reporting Rules.

In addition, the SEC’s SBS reporting regime is still very much a work in progress. Not only did the SEC issue the Proposed SEC Amendments for public comment, but the SEC also indicated that more proposed rules will be forthcoming (e.g., rules regarding block trades, data formats and taxonomies, and reporting of certain cross-border transactions). The SEC also did not adopt a final compliance schedule for SBS reporting. Instead, it has proposed an interim compliance schedule that would require:

- Regulatory reporting of SBS within a particular asset class six months after the first registered SB SDR that accepts SBS in that particular asset class commences operations as a registered SB SDR;⁶ and
- Public dissemination three months after regulatory reporting is required for a particular asset class.

While the timing will depend on, among other matters, when the first SB SDR is registered, it could be as much as eighteen months from the March 19, 2015 publication of Regulation SB SDR in the Federal Register before SBS regulatory reporting is required and a further three months before SBS trade information becomes subject to public dissemination. It also is possible that SBS reporting will be required before any market participant is required to register as a security-based swap dealer (“**SBSD**”) or major security-based swap participant (“**MSBSP**”).

⁵ The CFTC’s final swap reporting rules are contained in four separate releases: Real-time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1182 (Jan. 9, 2012), 77 Fed. Reg. 2909 (Jan. 20, 2012) (correction), available at: <http://www.gpo.gov/fdsys/pkg/FR-2012-01-09/pdf/2011-33173.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2012-01-20/pdf/2012-1031.pdf>; Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (Jan. 13, 2012), available at: <http://www.gpo.gov/fdsys/pkg/FR-2012-01-13/pdf/2011-33199.pdf>; Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 Fed. Reg. 35200 (June 12, 2012), available at: <http://www.gpo.gov/fdsys/pkg/FR-2012-06-12/pdf/2012-12531.pdf>; and Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 Fed. Reg. 32866 (May 31, 2013), 78 Fed. Reg. 42436 (July 16, 2013) (correction), available at: <http://www.gpo.gov/fdsys/pkg/FR-2013-05-31/pdf/2013-12133.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2013-07-16/pdf/2013-16938.pdf>.

In addition, the CFTC has requested comment on swap data reporting requirements set forth in Part 45 of the CFTC regulations, which establishes swap data recordkeeping rules and rules for the reporting of swap transaction data to a registered swap data repository (“**SDR**”). See Review of Swap Data Recordkeeping and Reporting Requirements, 79 Fed. Reg. 16689 (Mar. 26, 2014) (“**CFTC Request for Comment**”), available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-03-26/pdf/2014-06426.pdf>.

⁶ SB SDRs are required to comply with the SB SDR rules, including registration requirements, by March 18, 2016 (365 days after publication of Regulation SB SDR in the Federal Register).

I. CROSS-BORDER SCOPE AND RELATED ISSUES

Scope

When considered together, the Final SEC Reporting Rules and the Proposed SEC Amendments (together, "**Regulation SBSR**") require reporting of all SBS except for:

- SBS transactions where there is no U.S. person,⁷ registered SBSD, or registered MSBSP on either side of the transaction; and
- SBS transactions where there is no registered SBSD or registered MSBSP on either side and there is a U.S. person on only one side of the transaction (e.g., if a foreign dealer whose dealing activity is under the *de minimis* threshold in the SBSD definition enters into an SBS transaction with a U.S. person).⁸

The SEC states that it anticipates seeking additional comment to address these transaction scenarios at a later date.⁹ Likewise, the CFTC has not yet fully addressed conduct by non-U.S. persons within the United States.¹⁰

Subject to these exceptions, Regulation SBSR requires both regulatory reporting and public dissemination of any SBS transaction where:

⁷ The Final SEC Reporting Rules define the term "U.S. person" in the same way that the SEC defined that term in the Final SEC Cross-Border Rules, *i.e.*, as: (i) a natural person resident in the United States; (ii) a partnership, corporation, trust, investment vehicle or other legal person organized, incorporated or established under the laws of the United States or having its principal place of business in the United States; (iii) an account (whether discretionary or nondiscretionary) of a U.S. person; or (iv) an estate of a decedent who was a resident of the United States at the time of death. Certain international organizations are excluded from the definition. A foreign branch, agency or office of a U.S. person is a U.S. person. See Final SEC Cross-Border Rules at 47303-13.

⁸ The Final SEC Reporting Rules also do not address (i) "**clearing transactions**" (defined below) or (ii) SBS transactions executed on a platform (defined below) that will be submitted to clearing. These transactions are addressed in the Proposed SEC Amendments as discussed below. The SEC uses the term "**covered transactions**" to refer to all SBS transactions other than those described in (i) and (ii) and the bullets above. The Final SEC Reporting Rules only address covered transactions.

⁹ See Proposed SEC Amendments at 14742; see also note 14, *infra*. Elsewhere the SEC also stated that it expected to solicit additional comment regarding when a transaction between two non-U.S. persons should be included in the relevant SBSD *de minimis* calculations because one or both counterparties are engaged in SBS activity within the United States. See Final SEC Cross-Border Rules at 47279-81.

¹⁰ On November 14, 2013, the CFTC's Division of Swap Dealer and Intermediary Oversight issued an advisory stating that the CFTC's "transaction-level" rules apply to swaps between a non-U.S. swap dealer and a non-U.S. person if the swaps are regularly arranged, negotiated or executed by personnel or agents of the non-U.S. swap dealer located in the United States. See CFTC Staff Advisory 13-69 (Nov. 14, 2013). Through a series of no-action letters, the CFTC staff has largely delayed the effectiveness of this advisory until September 30, 2015. See, e.g., CFTC No-Action Letter 14-140 (Nov. 14, 2014). The CFTC also has solicited public comment on the advisory. See Request for Comment on Application of Commission Regulations to Swaps Between Non-U.S. Swap Dealers and Non-U.S. Counterparties Involving Personnel or Agents of the Non-U.S. Swap Dealers Located in the United States, 79 Fed. Reg. 1347 (Jan. 8, 2014), available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-01-08/pdf/2014-00080.pdf>.

- One or both of the direct or indirect counterparties (*i.e.*, one of the primary obligors or a guarantor of either such obligor)¹¹ is a U.S. person; or
- The transaction is accepted for clearing by a clearing agency having its principal place of business in the United States.¹²

In addition, an SBS that is not captured by either of these prongs is 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 SBSB or registered MSBSP. This rule requires a foreign SBSB or foreign MSBSP that enters into an SBS transaction with a non-U.S. person whose obligations under the SBS are not guaranteed by a U.S. person (referred to herein as an “**unguaranteed non-U.S. person**”) to report the transaction for regulatory purposes only (*i.e.*, without public dissemination).

Regulation SBSR generally requires the same scope of regulatory reporting of SBS transactions as the CFTC requires for swaps under its cross-border guidance (the “**CFTC Cross-Border Guidance**”).¹³ Regulation SBSR also requires both regulatory reporting and public dissemination of all SBS transactions conducted by a foreign branch of a U.S. person, regardless of the status of the counterparty, just as required by the CFTC Cross-Border Guidance. In this respect, the Final SEC Reporting Rules depart from the Proposed SEC Rules by eliminating an exception from the public dissemination requirement for transactions conducted by a foreign branch of a U.S. person with unguaranteed non-U.S. persons that are not SBSBs.

However, unlike the CFTC Cross-Border Guidance, Regulation SBSR requires public dissemination of any SBS transaction of a non-U.S. person whose obligations under the SBS are guaranteed by a U.S. person (referred to herein as a “**guaranteed non-U.S. person**”), even if the other counterparty to the transaction is an unguaranteed non-U.S. person that is not a registered SBSB. This also is a departure from the Proposed SEC Rules, which had provided an exception for transactions between a guaranteed non-U.S. person and an unguaranteed

¹¹ Regulation SBSR defines (i) “**direct counterparty**” to mean “a person that is a primary obligor on [an SBS]” and (ii) “**indirect counterparty**” to mean “a guarantor of a direct counterparty’s performance of any obligation under [an SBS] such that the direct counterparty on the other side can exercise rights of recourse against the indirect counterparty in connection with the [SBS]; for these purposes a direct counterparty has rights of recourse against a guarantor on the other side if the direct counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the guarantor in connection with the [SBS].” See *also* Final SEC Cross-Border Rules at 47316-19 (discussing when a party has rights of recourse against another party in the cross-border context).

¹² We note below that SB SDRs are prohibited from publicly disseminating information regarding clearing transactions. Accordingly, this prong of the rule requires the original “alpha SBS” between the two non-U.S. persons to be reported to an SB SDR and publicly disseminated, whereas the “gamma SBS” and “beta SBS” that arise after novation are subject to regulatory reporting but not public dissemination. See discussion of clearing transactions in Section VI below.

¹³ The CFTC addressed the cross-border application of the swap reporting rules in Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 45292 (July 26, 2013), *available at*: <http://www.gpo.gov/fdsys/pkg/FR-2013-07-26/pdf/2013-17958.pdf>.

non-U.S. person that is not an SBSB (provided the transactions were conducted outside the United States).¹⁴

The table below compares the current cross-border scope of the CFTC and SEC reporting rules for swaps and SBS, respectively.

Cross-Border Scope of Reporting Rules				
Transaction Counterparty	CFTC		SEC	
	Regulatory Reporting	Public Dissemination	Regulatory Reporting	Public Dissemination
U.S. Person	All swaps	All swaps	All SBS	All SBS
Foreign Branch of U.S. Person	All swaps	All swaps	All SBS	All SBS
Guaranteed Non-U.S. Person (not registered)	Only swaps with a U.S. person, guaranteed or conduit affiliate or registered swap dealer (“SD”) or major swap participant (“MSP”)	Only swaps with a U.S. person, guaranteed or conduit affiliate or registered SD or MSP	All SBS	All SBS ¹⁵
Registered Foreign Dealer/Major Participant	All swaps	Only swaps with a U.S. person or guaranteed or conduit affiliate	All SBS	Only SBS with a U.S. person or guaranteed non-U.S. person, or that are cleared by a clearing agency having its principal place of business in the United States ¹⁶

¹⁴ The SEC says that it anticipates soliciting additional comment on whether to except transactions between a guaranteed non-U.S. person that is not an SBSB or MSBSP, on one side, and an unguaranteed non-U.S. person that is not an SBSB or MSBSP, on the other side (a “covered cross-border transaction”). See Proposed SEC Amendments at 17643, n.140; see also SEC Cross-Border Proposal at 31062-63.

¹⁵ See note 14, *supra*.

¹⁶ Regulation SBSR also requires regulatory reporting and public dissemination of an SBS between unguaranteed non-U.S. persons that are not registered SBSBs or registered MSBSPs if the SBS is cleared by a clearing agency having its principal place of business in the United States. However, neither side of such transaction is currently required by Regulation SBSR to report the transaction to a registered SB SDR. See text accompanying note 9, *supra*.

Substituted Compliance

To minimize the potential for duplicative or conflicting regulations, the SEC adopted a “substituted compliance” framework under which certain market participants may satisfy certain requirements of Regulation SBSR by complying with comparable foreign requirements. Substituted compliance is available if at least one of the direct counterparties to the SBS is either a non-U.S. person or a foreign branch of a U.S. person, and it is not conditioned on the location of execution, negotiation, or arrangement of a particular transaction.¹⁷ The SEC permits substituted compliance in a wider range of cases than the CFTC, as the CFTC Cross-Border Guidance does not permit parties to swaps with U.S. persons to rely on substituted compliance except for certain swaps with foreign branches.

The SEC may issue a substituted compliance determination if it finds that the corresponding requirements of the foreign regulatory system are comparable to the relevant provisions of Regulation SBSR and are accompanied by an effective supervisory and enforcement program administered by the relevant foreign authorities. Although the SEC says that it will ultimately focus on regulatory outcomes as a whole rather than a rule-by-rule comparison, the SEC nonetheless will not make a substituted compliance determination unless it finds that:

- The data elements that are required to be reported pursuant to the rules of the foreign jurisdiction are comparable to those required to be reported pursuant to Regulation SBSR;
- The rules of the foreign jurisdiction require the SBS to be reported and publicly disseminated in a manner and a timeframe comparable to those required by Regulation SBSR (or, in the case of transactions that are subject to regulatory reporting but not public dissemination, the rules of the foreign jurisdiction require SBS to be reported in a manner and timeframe comparable to those required by Regulation SBSR);
- The SEC has direct electronic access to the SBS data held by a trade repository or foreign regulatory authority to which SBS are reported pursuant to the rules of that foreign jurisdiction; and
- Any trade repository or foreign regulatory authority in the foreign jurisdiction that receives and maintains required transaction reports of SBS pursuant to the laws of that foreign jurisdiction is subject to requirements regarding data collection and maintenance; systems capacity, integrity, resiliency, availability, and security; and recordkeeping that are comparable to the requirements imposed on SB SDRs by the SEC’s rules and regulations.

Substituted compliance determinations will be subject to a public comment period.

¹⁷ Foreign regulatory authorities are permitted to submit applications for substituted compliance determinations on behalf of market participants subject to their jurisdiction.

Foreign Privacy Laws

The SEC recognizes that certain foreign jurisdictions have privacy laws or blocking statutes that may prohibit the disclosure of the identity of a counterparty to an SBS transaction. Thus, the party responsible for reporting a cross-border SBS could face a dilemma: comply with Regulation SBSR and report the identity of the counterparty, and thereby violate the foreign law; or comply with the foreign law by withholding the identity of the counterparty and thereby violate Regulation SBSR.

The SEC attempts to address this concern, but only with respect to certain historical SBS. Where reporting the counterparty ID of the non-reporting party would violate foreign privacy laws, SEC permits a reporting party to request an exemption from the requirement pursuant to Rule 0-12 under the Exchange Act for pre-enactment and transitional SBS (defined below) executed up to the last day before the effective date of the Final SEC Reporting Rules (which is May 18, 2015). However, any SBS executed on or after the effective date must comply with the requirement to report all counterparty IDs, regardless of privacy law considerations. As a result, SBS market participants may wish to seek their counterparties' consent to reporting now, in those cases where blocking statute barriers can be waived by counterparties, before the eligibility for such an exemption ends.

II. WHO IS REQUIRED TO REPORT?

Regulation SBSR assigns the duty to report to one side of the transaction (“**reporting side**”), according to a prescribed hierarchy and in generally the same manner as the Final CFTC Reporting Rules (as noted above, the SEC intends to solicit comment on reporting obligations with respect to certain cross-border transactions not involving a registered SBSD or registered MSBSP). The direct and indirect counterparties on the reporting side of an SBS have joint responsibility for the reporting obligation, and the status of both the direct and indirect counterparties is taken into account when determining which side is the reporting side. Under Regulation SBSR, the “reporting side” is determined as follows:

- If only one side includes a registered SBSD, that side is the reporting side.
- If only one side includes a registered MSBSP and neither side includes a registered SBSD, the side that includes a registered MSBSP is the reporting side.
- If neither side includes a registered SBSD or registered MSBSP and only one side includes a U.S. person, the side that includes the U.S. person is the reporting side.¹⁸
- The reporting side is determined by agreement of the counterparties where:
 - Both sides include a registered SBSD;

¹⁸ As noted above, an SBS transaction where there is no registered SBSD or registered MSBSP on either side and there is a U.S. person on only one side of the transaction is not yet subject to the reporting rules as adopted.

- Both sides include a registered MSBSP;
- Neither side includes a registered SBSD or registered MSBSP and both sides include a U.S. person; or
- Neither side includes a registered SBSD or registered MSBSP and neither side includes a U.S. person.

For “clearing transactions,”¹⁹ the Proposed SEC Amendments would assign the reporting duties to the registered clearing agency that is a counterparty to the SBS. For SBS that are executed on a platform (*i.e.*, a national securities exchange or an SBS execution facility (“**SB SEF**”) that is registered with the SEC or exempt from registration) and will be submitted to clearing, the Proposed SEC Amendments would require a platform to report the transaction to a registered SB SDR.²⁰ Unlike the case with swaps, non-cleared SBS executed on a platform would be reported by one of the sides to the transaction, not the platform.

As noted above, because the SEC has not yet finalized rules regarding the registration of SBSDs and MSBSPs, it is possible that SBS reporting will be required before any market participant is required to register as an SBSD or MSBSP. In that case, the reporting party for most transactions would be assigned through agreement of the parties.

III. WHEN DO PARTIES HAVE TO REPORT?

During the interim phase of Regulation SBSR, counterparties will have up to 24 hours after the time of execution²¹ (or acceptance for clearing in certain cases) to report SBS transactions, although counterparties are free to report transactions sooner if they prefer. The registered SB SDR that receives the transaction information will be required to publicly disseminate a report of the transaction immediately thereafter.

In order to ensure that all market participants have the ability to view swap market data at the same time, Regulation SBSR temporarily restricts the dissemination of SBS data by transacting parties and other entities other than registered SB SDRs (the “**embargo rule**”). Under the embargo rule, transaction information may not be made available to persons other than a counterparty or a post-trade processor before the Primary Trade Information (defined below) about the SBS is sent to a registered SB SDR. Thus, for example, an SB SEF would not be able to broadcast SBS trades executed electronically across its platform to all participants

¹⁹ “**Clearing transactions**” describe SBS that arise when a registered clearing agency accepts an SBS for clearing as well as SBS that arise as part of a clearing agency’s internal processes, such as SBS used to establish prices for cleared products and SBS that result from netting other clearing transactions of the same product in the same account into an open position.

²⁰ Regulation SBSR permits the reporting side to enter into an agreement with a third party to report the transaction on its behalf. However, the reporting party remains liable for fulfilling any reporting obligations under Regulation SBSR.

²¹ The “**time of execution**” is the point at which the counterparties to an SBS become irrevocably bound under applicable law. See discussion of “post-priced trades” in Section VI below.

until it has reported the SBS to an SB SDR. The embargo rule thus creates an incentive for an SB SEF to report SBS before the end of the 24-hour deadline.

It is important to note that this is an “interim” reporting deadline and presumably the SEC will shorten the reporting deadline at a later date, perhaps as part of its treatment of block trades (see below).

IV. WHAT DATA GETS PUBLICLY DISSEMINATED?

Rather than prescribing specific data elements, Regulation SBSR requires certain minimum categories of SBS information (“**Primary Trade Information**”) to be reported to an SB SDR and publicly disseminated.²² Registered SB SDRs are required to establish and maintain policies and procedures that enumerate the specific data elements of an SBS transaction that must be reported.²³ The minimum information required to be reported and publicly disseminated includes information regarding the basic economic terms of the transactions, including any product ID, if available.²⁴ The full description of the Primary Trade Information that is required to be publicly disseminated is included in Appendix A. Generally this data is similar to that required by the CFTC to be publicly reported.²⁵

An SB SDR is required to assign each SBS transaction a unique transaction ID and publicly disseminate the Primary Trade Information immediately upon its receipt or upon the SB SDR re-opening following a period when it was closed.²⁶ During Regulation SBSR’s interim phase, the full notional amount of every SBS transaction is publicly disseminated, without the use of notional caps or other masking devices (unlike under CFTC rules).

²² The SEC believes that attempting to enumerate the required data elements for each category of SBS could result in a regulatory framework that constantly lagged the market and would need to be updated with each new product. Accordingly, unlike the CFTC, the SEC has chosen to adopt a standards-based approach that it believes will more easily accommodate new SBS reporting protocols or data formats.

²³ A registered SB SDR also is required to maintain policies and procedures that specify one or more acceptable data formats, connectivity requirements, and other protocols for submitting information. The SEC believes that, however a registered SB SDR permits its participants to report SBS transaction data to the SB SDR, the SB SDR should be able to provide to the SEC normalized and uniform data, so that the transaction data can readily be used for regulatory purposes without the SEC itself having to cleanse or normalize the data. The SEC anticipates that it will propose for public comment detailed specifications of acceptable formats and taxonomies that would facilitate an accurate interpretation, aggregation, and analysis of SBS data by the SEC.

²⁴ The “**product ID**” is the unique identifier code assigned to a group of SBS contracts each having the same material economic terms except those relating to price and size. If the SBS does not have a product ID, or if the product ID does not include the following information, Regulation SBSR requires reports for the SBS to include: (i) information that identifies the SBS, including the asset class of the SBS and the specific underlying reference asset(s), reference issuer(s), or reference index; (ii) the effective date; (iii) the scheduled termination date; (iv) the terms of any fixed or floating rate payments, and the frequency of any such payments; and (v) if the SBS is customized such that the information above does not provide all of the material information necessary to identify such customized SBS or does not contain the data necessary to calculate the price, a flag to that effect.

²⁵ Appendix A contains a high-level comparison of the data elements required to be reported and publicly disseminated by the CFTC and SEC for swaps and SBS, respectively.

²⁶ The SB SDR may outsource the assignment of the transaction ID, including to one of the parties, which would align this responsibility with the assignment of unique swap identifiers under CFTC rules.

In addition, a registered SB SDR is required to establish policies and procedures that describe how reporting parties will report transactions that the SB SDR believes could, in the fair and reasonable estimation of the SB SDR, cause a person without knowledge of these characteristics or circumstances to receive a distorted view of the market. In this regard, the SEC has recommended that SB SDRs generally require condition flags identifying:

- Inter-affiliate transactions;
- Transactions resulting from netting or compression exercises (other than through a registered clearing agency, which are not publicly disseminated);
- Transactions resulting from a “forced trading session” conducted by a clearing agency;
- Transactions reported late;
- Transactions resulting from the default of a clearing member; and
- Package trades.

V. WHAT OTHER DATA HAS TO BE REPORTED?

Regulation SBSR requires certain additional categories of SBS information to be reported to an SB SDR within 24 hours of execution (or acceptance for clearing in certain cases) (“**Secondary Trade Information**”). Secondary Trade Information is not subject to public dissemination. A full description of Secondary Trade Information is included in Appendix A. Here we highlight a few key categories of this information.

Unique Identification Codes

Regulation SBSR requires regulatory reporting of a number of unique identification codes (“**UICs**”) in addition to product, transaction, and legal entity IDs.²⁷ Of particular note are the following UICs that are required to be reported under Regulation SBSR:²⁸

²⁷ UICs are to be assigned by or on behalf of an SEC approved standards-setting body. The SEC recognizes the Global Legal Entity Identifier System (“**GLEIS**”), administered by the Regulatory Oversight Committee, as such an approved body. If an SEC approved standards-setting body has not assigned a UIC to a particular participant, unit of a participant, or product, the SB SDR to which the participant reports must assign a UIC using its own methodology. SB SDRs are required to maintain UICs for both sides of an SBS. Where a UIC for the non-reporting party is not provided by the reporting party, the SB SDR has an affirmative duty to communicate with the non-reporting party and obtain a complete UIC report for the non-reporting side. See note 27, *infra*.

²⁸ Regulation SBSR requires the reporting side to provide UIC information regarding the direct counterparty on its side of the trade only, but requires the registered SB SDR to which the SBS is reported to obtain these UICs from the non-reporting side. However, if the non-reporting side for the SBS is not a U.S. person or a registered SBSD or registered MSBSP, the registered SB SDR would not be required to request UIC information from such non-reporting side.

- Branch ID – The UIC assigned to the relevant branch or other unincorporated office, if any, of the counterparty.
- Broker ID – The UIC assigned to a person acting as a broker for the counterparty (e.g., a registered broker-dealer that intermediates the transaction).²⁹
- Execution agent ID – The UIC assigned to any person other than a broker or trader that facilitates the execution of an SBS on behalf of a direct counterparty (e.g., an asset manager).
- Trader ID – The UIC assigned to a natural person who executes one or more SBS on behalf of a direct counterparty.
- Trading desk ID – With respect to a counterparty, the smallest discrete unit of organization of the participant that purchases or sells SBS for the account of the counterparty or an affiliate thereof.

In most cases, the Final CFTC Reporting Rules do not require reporting of these IDs. Therefore, market participants may have to establish new systems to track and, in some cases, update this information for SBS transactions.

Parent and Affiliate Information

Regulation SBSR requires participants in an SB SDR to provide the SB SDR with information sufficient to identify the participant's ultimate parent(s) and any affiliate(s) that are also participants of the SB SDR. The CFTC only requires identification of the participant's ultimate parent(s).

Title and Date of Agreements

Under Regulation SBSR, Secondary Trade Information includes, for uncleared SBS, the title and date of any master agreement, collateral agreement, margin agreement or any other agreement incorporated by reference into the SBS contract, but not the entire document. The extent to which such information is covered by the Final CFTC Reporting Rules is not entirely clear.³⁰

²⁹ Because SBS are securities for purposes of the Exchange Act, a person that acts as a broker as defined in Section 3(a)(4) of the Exchange Act in connection with an SBS would be required to register as a broker-dealer by Section 15(a)(1) of the Exchange Act, unless eligible for an exemption. However, the SEC has provided temporary exemptions from the registration requirements under Section 15(a)(1) of the Exchange Act and the other requirements of the Exchange Act, and the rules and regulations thereunder, that apply to a broker-dealer that is not registered with the SEC. See Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of "Security" to Encompass Security-Based Swaps, and Request for Comment, Release No. 34-71485 (Feb. 5, 2014), 79 Fed. Reg. 7731 (Feb. 10, 2014), available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-02-10/pdf/2014-02834.pdf>.

³⁰ See CFTC Letter No. 14-108 (Aug. 18, 2014); see also CFTC Request for Comment, *supra* note 5.

Valuation Data

Unlike the CFTC, the SEC does not require reporting of valuation data. However, the SEC does require reporting of any data elements included in the agreement between the counterparties that would be necessary for a person to determine the market value of the transaction.

Other Information

SB SDRs are not permitted to public disseminate Secondary Trade Information or the following information:

- The identity of any SBS counterparty;
- With respect to an SBS that is not cleared at a registered clearing agency and that is reported to the registered SB SDR, any information disclosing the business transactions and market positions of any person;
- Any information regarding pre-enactment and transitional SBS, subject to an exception for certain life cycle events (see below);
- Any non-mandatory report;
- Any information regarding a clearing transaction that arises from the acceptance of an SBS for clearing by a registered clearing agency or that results from netting other clearing transactions;³¹ and
- Any information regarding the allocation of an SBS.

VI. SPECIFIC TRADE TYPES

Block Trades

The SEC did not adopt or propose rules relating to block trades. The SEC states that the 24 hour timeframe is designed, in part, to minimize the potential for market disruption resulting from public dissemination of SBS transaction information during the interim phase of Regulation SBSR. The SEC anticipates that, during the interim phase, it will collect and analyze data concerning the sizes of transactions that potentially affect liquidity in different segments of the market in connection with considering block trade thresholds. In connection with this consideration, the SEC has directed its staff to use data collected during the interim phase to publish a report for each asset class of SBS assessing the impact of post-trade transparency on that asset class. Appendix A to Rule 901 of Regulation SBSR sets forth the guidelines for these

³¹ The “alpha SBS” that is accepted for clearing is subject to public dissemination, but not the “gamma SBS” and “beta SBS” that replace the “alpha SBS” after novation. See discussion of cleared trades below.

reports, which must be completed by SEC staff no later than two years following the initiation of public dissemination of SBS transaction data by the first registered SB SDR in each asset class.

Based on this analysis, the SEC anticipates that it will prepare a proposal that would address, among other matters: (i) the criteria for determining what constitutes a large notional SBS transaction (a block trade) for particular markets and contracts; and (ii) the appropriate time delay for disseminating such large notional SBS transactions to the public. The SEC also says that it anticipates considering whether it may be appropriate to establish notional caps or rounding conventions in disseminated reports, as the CFTC does.

Inter-Affiliate Trades

Although commenters had argued that inter-affiliate SBS transactions should not be subject to public dissemination (or in some cases regulatory reporting) requirements because dissemination of such transactions would prevent an accurate assessment of SBS markets, Regulation SBSR does not exempt SBS transactions entered into within an affiliated group, either for historical inter-affiliate transactions or new inter-affiliate transactions. Rather, the SEC believes that a registered SB SDR should establish a flag for inter-affiliate SBS to help market observers better understand the information that is publicly disseminated so that they do not receive a distorted view of the market. By contrast, the Final CFTC Reporting Rules do not require public dissemination of inter-affiliate swaps unless they are “arm’s length” transactions and the CFTC staff has provided no-action relief from regulatory reporting for certain inter-affiliate swaps between end users.

Post-Priced Trades

“Post-priced SBS” are SBS for which the price, size and/or other characteristics of the transaction are determined based upon subsequent hedging activity or an agreed upon market observation period, which may conclude later in the same day or, less often, on the following day.

As noted above, under Regulation SBSR, the “time of execution” for an SBS is the point at which the counterparties to the SBS become irrevocably bound under applicable law. This time will occur before a transaction is confirmed, acknowledged or verified. For example, in the case of an orally negotiated SBS, the time of execution would generally be the time that the parties agree to the SBS’s material terms. With respect to “post-priced SBS,” the SEC notes that if the key terms of an SBS, such as price or size, are so indefinite that they cannot be reported to a registered SB SDR until sometime after the counterparties agree to preliminary terms, the counterparties may not have “executed” the SBS under applicable law. However, if the counterparties determine that their preliminary agreement constitutes an execution, the SEC believes that allowing an SBS to be reported at any point up to 24 hours after the time of execution should address any concerns market participants may have regarding the reporting of post-priced SBS.

A similar “time of execution” analysis is relevant for post-priced swaps under the Final CFTC Reporting Rules, but those rules do not provide for any reporting delay (and a public

dissemination delay only for block trades). However, the CFTC Request for Comment included questions on post-priced swaps.

Bespoke Trades

As noted above, a registered SB SDR must establish policies and procedures that describe how reporting parties will report transactions that the SB SDR believes could, in the fair and reasonable estimate of the SB SDR, cause a person without knowledge of these characteristics or circumstances to receive a distorted view of the market. This includes requiring condition flags be reported by the reporting party for bespoke transactions, *i.e.*, when the information reported does not provide all of the material information necessary to identify the SBS or does not contain the data elements necessary to calculate the price. The Final CFTC Reporting Rules take a similar approach to bespoke trades.

Package Trades

Package trades are composed of multiple components, or “legs,” some of which may be SBS. Although such package trades are typically executed at a single, integrated price, each leg is separately booked and processed. In these cases, Regulation SBSR requires a reporting side to separately report (and the SB SDR to separately disseminate) each SBS component of the package trade. In addition, in developing its policies and procedures, a registered SB SDR must consider requiring participants to identify the individual component SBS of such a trade as part of a package trade, and should consider disseminating reports of the individual SBS components of the package trade with a condition flag that identifies them as part of a package trade.

However, if a market participant combines the economic elements of multiple instruments into one SBS contract, Regulation SBSR requires a single report of the transaction and does not require market participants to disaggregate a customized SBS if it consists of a single contract incorporating elements of what otherwise might have been two or more SBS.

The CFTC has solicited comment on the treatment of complex swap transactions, such as package and strategy trades.³²

Proprietary Basket Trades

Regulation SBSR requires a registered SB SDR to publicly disseminate, for each transaction, the Primary Trade Information required to be reported, which includes the specific underlying reference asset(s), reference issuer(s), or reference index. The SEC believes the primary trading terms of an SBS should be disseminated to help facilitate price discovery, including in the case of “proprietary baskets” (*i.e.*, customized narrow-based baskets that a

³² See CFTC Request for Comment, *supra* note 5.

counterparty deems proprietary to its business), even if such dissemination may reveal information proprietary to a counterparty's business and negatively impact its trading activity.³³

The CFTC has not expressly addressed reporting of swaps based on proprietary baskets.

Allocated Trades

Allocations, or bunched orders, are post-trade events whereby an agent (usually an asset manager) allocates a portion of an executed SBS to clients who are the actual counterparties to the original transaction. Under Regulation SBSR, the bunched order is subject to both regulatory reporting and public dissemination requirements. The SBS that result from the allocation of the bunched order, if they are not cleared, are subject to regulatory reporting like other SBS. However, the SB SDR may not publicly disseminate any information regarding the allocation of a bunched order execution, which would include the smaller SBS resulting from the allocation of the initial transaction. The Proposed SEC Amendments provide further guidance regarding allocated SBS in the context of platform trading and clearing.

For swaps that are subsequently allocated by an asset manager or other agent among multiple clients, the Final CFTC Reporting Rules require reporting for both the pre-allocation transaction (which will be disseminated publicly) and, no later than eight hours after execution, reporting of each post-allocation swap (which will not be publicly disseminated).

Cleared Trades

Under the agency model of clearing, an SBS that is accepted for clearing – often referred to as an “alpha SBS” – is terminated and replaced with two new SBS, known as “beta SBS” and “gamma SBS.”³⁴ In this case, one of the direct counterparties to the alpha SBS becomes a direct counterparty to the beta SBS, and the other direct counterparty to the alpha SBS becomes a direct counterparty to the gamma SBS. The clearing agency would be a direct counterparty to each of the beta SBS and the gamma SBS. The Proposed SEC Amendments would assign the reporting duties for clearing transactions (defined to mean an SBS that has a registered clearing agency as a direct counterparty) to the registered clearing agency that is a counterparty to the SBS and permit that clearing agency to select the SB SDR for beta and gamma SBS. This approach is generally similar to the CFTC's approach to reporting cleared swaps.

Platform Trades

The Proposed SEC Amendments would assign the reporting duty for SBS that are executed on a platform and submitted for clearing to the platform. Specifically, proposed rules

³³ See Final SEC Reporting Rules at 14575, n.67.

³⁴ By contrast, under the principal model, the clearing member who stands between each counterparty and the clearing agency acts as the counterparty's principal. Under that model, clearing results in four additional swaps: each counterparty with each clearing member and each clearing member with the clearing agency.

would require a platform to report to a registered SB SDR an SBS executed on such platform that will be submitted to clearing.

This proposal is generally similar to the CFTC's approach to reporting platform-executed, cleared swaps, but, unlike the CFTC, the SEC would not assign reporting duties to a platform for non-cleared SBS.

Prime Brokerage Trades

The SEC addressed a "novation" model for prime brokerage SBS, under which a counterparty negotiates the economic terms of an SBS with an executing dealer (the "**Counterparty-ED SBS**"), which is terminated upon its acceptance by a prime broker and replaced with two mirror SBS, an SBS between the counterparty and the prime broker (the "**PB-Counterparty SBS**") and an SBS between the prime broker and the executing dealer (the "**PB-ED SBS**"). The SEC did not address the "agency" model under which the counterparty negotiates with the executing dealer as agent for the prime broker.

Under the novation model, the Counterparty-ED SBS would be a reportable transaction under Regulation SBSR. The PB's acceptance of that SBS and execution of the PB-ED SBS and the PB-Counterparty SBS would have the effect of terminating the Counterparty-ED SBS, which would be reportable as a life cycle event. Both of these subsequent SBS would be separate reportable transactions under Regulation SBSR. All three SBS also would be subject to the public dissemination requirements. The fact that all three transactions in a prime brokerage arrangement would be related is a special circumstance of the type that the SEC believes registered SB SDRs should consider in developing condition flags. The Proposed SEC Amendments discuss prime brokerage SBS but do not propose additional rules regarding their reporting.

In response to industry comments on the unworkability of prime brokerage swap reporting, CFTC staff set forth a temporary transaction reporting methodology in CFTC No-Action Letter No. 12-53 (Dec. 17, 2012). The CFTC has not provided additional relief since this relief expired in July 2013, but the CFTC has requested comment on the treatment of prime brokerage trades.³⁵

Life Cycle Events

Regulation SBSR requires prompt reporting to an SB SDR of (i) life cycle events and (ii) adjustments due to life cycle events. The report must include the transaction ID for the SBS (and any related SBS) and be made to the same SB SDR as the original transaction report. Similar to the Final CFTC Reporting Rules, Regulation SBSR defines life cycle events to include:

- Termination of an existing SBS;

³⁵ See CFTC Request for Comment, *supra* note 5.

- An assignment or novation resulting in a change in counterparty;
- Partial or full termination of the SBS;
- A change in the cash flows originally reported;
- Any change to the collateral agreement for an SBS that is not cleared; and
- A corporate action affecting a security or securities on which the SBS is based (e.g., a merger, dividend, stock split or bankruptcy).³⁶

Life cycle events do not include:

- Scheduled expiration of the SBS;
- A previously described and anticipated interest rate adjustment (such as a quarterly interest rate adjustment); or
- Whether or not an SBS has been accepted for clearing.

The reporting party for the initial transaction has the continuing responsibility to report life cycle events. However, where an assignment or novation occurs, the reporting party must be re-determined according to the reporting party hierarchy. Public dissemination is required if information about an SBS is publicly disseminated (e.g., any of the Primary Trade Information) but subsequently one or more of the disseminated data elements is revised due to a life cycle event (or an adjustment due to a life cycle event).

The Final CFTC Reporting Rules take a similar approach to the regulatory reporting of life cycle events for swaps, but only require public dissemination of life cycle events that result in a change to the price of a swap.

Pre-enactment and Transitional SBS Reporting

Regulation SBSR requires regulatory reporting *but not public dissemination* of (i) SBS executed before July 21, 2010 (the enactment of the Dodd-Frank Act), the terms of which had not expired as of that date (“**pre-enactment SBS**”), and (ii) SBS executed on or after July 21, 2010 and before the date six months after the registration of an SB SDR in that asset class (“**transitional SBS**,” and together with pre-enactment SBS, “**historical SBS**”). For historical SBS, the reporting party must report the categories of Primary Trade Information and Secondary Trade Information only to the extent such information is available. Thus, if

³⁶ With respect to dividends, the SEC clarifies that a regular payment of a dividend that does not require a restatement of the terms of the SBS would not constitute a life cycle event. However, other actions involving dividends could be life cycle events. For example, the distribution of a stock dividend that required an adjustment to the notional terms of an equity SBS – or any other corporate action related to dividends that resulted in a modification of one or more terms of the SBS – would be a life cycle event and therefore would have to be reported under Regulation SBSR.

information about terminated or expired historical SBS no longer exists or was never collected (e.g., the exact date and time of execution), it would not be required to be reported.

Under Regulation SBSR, SB SDRs are not permitted to publicly disseminate information reported in relation to a historical SBS. However, certain life cycle events relating to historical SBS may be publicly disseminated.³⁷

VII. CONCLUSION

Although the SEC has adopted final reporting rules for SBS, it is far from finished implementing an SBS reporting regime. Before market participants will be required to report SBS transaction information to an SB SDR, the following must occur:

- The SEC must adopt the Proposed SEC Amendments to establish final (or interim final) compliance dates.
- The SEC must register SB SDRs in a particular asset class. Under Regulation SB SDR, SB SDRs must be in compliance with the SB SDR rules, including registration requirements, by March 18, 2016.
- The SEC must propose and adopt additional rules before reporting will be required for covered cross-border transactions.³⁸

The SEC also anticipates proposing for public comment detailed specifications of acceptable formats and taxonomies that would facilitate an accurate interpretation, aggregation, and analysis of SBS data by the SEC. It is unclear whether the SEC would permit an SB SDR to register prior to completing this rulemaking. In addition, before “real-time” reporting of SBS transaction information occurs, the following must happen:

- The SEC staff must complete a report for each asset class of SBS assessing the impact of post-trade transparency on that asset class. These reports must be completed by SEC staff no later than two years following the initiation of public dissemination of SBS transaction data by the first registered SB SDR in each asset class.
- The SEC must propose and adopt rulemaking relating to block trade thresholds.

³⁷ If a life cycle event of a historical SBS relating to any of the Primary Trade Information occurs after public dissemination is required for SBS in a particular asset class, a registered SB SDR would be required to publicly disseminate a report of that life cycle event, plus any condition flags required by the registered SDR's policies and procedures. In other words, the exclusion from public dissemination for historical SBS applies only to the initial transaction, not to any life cycle event of that historical SBS relating to the Primary Trade Information that occurs after public dissemination in that asset class is required. Therefore, life cycle events relating to the Primary Trade Information of historical SBS must, after the public dissemination requirement goes into effect, be publicly disseminated.

³⁸ See note 14, *supra*.

* * *

Please call any of your regular contacts at the firm or any of the partners and counsel listed under Derivatives in the Practices section of our website (www.cgsh.com) if you have any questions.

**APPENDIX A:
Comparison of CFTC and SEC Reporting Requirements**

The table below is intended to provide a high-level comparison of the CFTC and SEC reporting requirements for swaps and SBS, respectively. For each category of information required to be reported, indication is provided whether the CFTC or SEC, as applicable, requires regulatory reporting and public dissemination of the information.³⁹

The table is summary in nature, details have been omitted that may prove important in particular cases, and the description should not be viewed as a source of definitive legal guidance.

Field	SEC Rules 901(c) and 901(d)		CFTC Parts 43 and 45	
	Regulatory Reporting	Public Dissemination	Regulatory Reporting	Public Dissemination
Product ID, if available	Yes	Yes	Yes (The CFTC has not yet designated a unique product identifier or product classification system)	Yes
Asset class	Yes (including, but not limited to, credit derivatives and equity derivatives)	Yes	Yes	Yes
Underlying reference asset(s), reference issuer(s), or reference index	Yes (including "proprietary baskets")	Yes (including "proprietary baskets")	Yes	Yes (No guidance on "proprietary baskets")
Effective date	Yes	Yes	Yes	Yes
Scheduled termination date	Yes	Yes	Yes	Yes

³⁹ The table only includes swap information required to be reported that is contained in Exhibit A of Appendix 1 to Part 45 of the CFTC regulations (Minimum Primary Economic Terms Data: Credit Swaps and Equity Swaps) and swap information required to be publicly disseminated that is contained in Table A1 of Appendix A to Part 43 of the CFTC regulations (Data Fields and Suggested Form and Order for Real-Time Public Reporting of Swap Transaction and Pricing Data).

Field	SEC Rules 901(c) and 901(d)		CFTC Parts 43 and 45	
	Regulatory Reporting	Public Dissemination	Regulatory Reporting	Public Dissemination
Terms of any fixed or floating rate payments, and the frequency of any such payments	Yes	Yes	Yes	Yes (Disclosure of determination of how interest accrues over time; frequency of payments associated with each party's obligation and frequency of price resets)
Indication whether customized	Yes	Yes	Yes	Yes (An indication that the swap has one or more additional terms or provisions other than those listed in required fields that materially affect the price of the swap)
Date and time, to the second, of execution expressed using Coordinated Universal Time	Yes	Yes	Yes	Yes
Price, including currency in which the price is expressed and the amount(s) and currenc(ies) of any up-front payment	Yes	Yes	Yes	Yes
Notional amount(s) and the currenc(ies) in which the notional amount is expressed	Yes	Yes	Yes	Yes (When publicly disseminated, rounded and only up to the cap applicable to that asset class)

Field	SEC Rules 901(c) and 901(d)		CFTC Parts 43 and 45	
	Regulatory Reporting	Public Dissemination	Regulatory Reporting	Public Dissemination
Whether direct or indirect counterparties include a registered swap/SBS dealer	Yes	Yes	Yes	No
Whether intended to be submitted to clearing	Yes	Yes	Yes	Yes
Conditional flag specified by policies and procedures of the registered SDR or SB SDR to which the transaction is reported	Yes	Yes	Yes	Yes (Flags only exist in some cases (e.g., indication of other price affecting term for bespoke swaps))
Transaction ID	Yes	No	Yes	No
Counterparty ID or the execution agent ID for each counterparty.	Yes (The SEC has recognized GLEIS as an appropriate standard setting body for assigning participant IDs)	No	Yes (counterparty ID) Yes (execution agent ID in case of allocated swaps) (The CFTC has recognized GLEIS as an appropriate standard setting body for assigning participant IDs)	No
As applicable, the reporting party's: <ul style="list-style-type: none"> • branch ID • broker ID • trader ID and • trading desk ID 	Yes (The SB SDR has an affirmative duty to contact the non-reporting party and solicit these IDs for the transaction)	No	No	No

Field	SEC Rules 901(c) and 901(d)		CFTC Parts 43 and 45	
	Regulatory Reporting	Public Dissemination	Regulatory Reporting	Public Dissemination
Amounts and currencies of any up-front payments and a description of the terms and contingencies of the payment streams of each counterparty to the other	Yes (For example, with CDS who purchased protection, who sold protection; with other SBS, an indication of which party is long/short)	No	Yes (An indication of the counterparty purchasing or selling protection)	No
For uncleared transactions, the title and date of any master agreement, collateral agreement, margin agreement or any other agreement incorporated by reference into the contract	Yes (Actual agreements need not be reported)	No	Not clear ⁴⁰	No
To the extent not already provided, additional data elements included in the agreement that are necessary to determine the market value of the transaction	Yes	No	Yes	No
If the contract will be cleared, the name of the clearing agency	Yes	No	Yes	No
If not cleared, whether the end-user exception was invoked	Yes	No	Yes	Yes
Name of the counterparty electing the end-user exception, if any	Yes	No	Yes	No

⁴⁰ See note 30 and accompanying text, *supra*.

Field	SEC Rules 901(c) and 901(d)		CFTC Parts 43 and 45	
	Regulatory Reporting	Public Dissemination	Regulatory Reporting	Public Dissemination
If uncleared, a description of the settlement terms, including whether the contract is cash-settled or physically-settled and the method for determining the settlement value	Yes	No	Only to the extent matched or affirmed in verifying the swap	No (However reporting of settlement currency is required)
The platform ID, if applicable, of the venue where the contract was executed	Yes	No	Yes	Yes
Whether the swap arises from the allocation, termination, novation, or assignment of one or more existing contracts	Yes	Yes (Disseminated as life cycle event)	Yes	Yes
Cancellation	Yes	Yes (SB SDRs are required to re-disseminate corrected transaction reports, which presumably would include report of a cancellation)	Yes	Yes
Correction	Yes	Yes	Yes	Yes
Indication whether block trade or large notional off-facility contract	No	No	Yes	Yes
Indication of collateralization	No	No	Yes	No

Field	SEC Rules 901(c) and 901(d)		CFTC Parts 43 and 45	
	Regulatory Reporting	Public Dissemination	Regulatory Reporting	Public Dissemination
If reporting counterparty is not an SD or MSP (in the case of the CFTC) or SBSD or MSBSP (in the case of the SEC), an indication of whether the reporting counterparty (and non-reporting counterparty) is a financial entity	No	No	Yes	No
An indication whether the reporting counterparty (and non-reporting counterparty) is a U.S. person	No	No	Yes	No
An indication whether the contract will be allocated	No, only indication after allocation (Once allocated, a life cycle event will be reported for the bunched order)	No	Yes	No
An indication that the contract is a post-allocation contract	Yes	No (Post-allocation contracts not publicly disseminated)	Yes	No (Post-allocation contracts not publicly disseminated)
An indication whether the reporting counterparty (and non-reporting counterparty) is an SD (in the case of the CFTC) or SBSD (in the case of the SEC)	No (Reporting required if both counterparties are SBSD)	No	Yes	No
An indication whether the reporting counterparty (and non-reporting counterparty) is an MSP (in the case of the CFTC) or MSBSP (in the case of the SEC)	No	No	Yes	No

Field	SEC Rules 901(c) and 901(d)		CFTC Parts 43 and 45	
	Regulatory Reporting	Public Dissemination	Regulatory Reporting	Public Dissemination
An indication whether a multi-asset contract and, if so, an indication of the primary and secondary asset classes	No	No	Yes	No
An indication that a contract is a mixed swap and if dually reported, the identify of other repository	No	No	Yes	No
Contract type	No (But likely ascertainable from other reported information)	No	Yes (For example, swap, swaption, forward, option, basis swap, index swap, basket swap)	No
Any other term(s) of the contract matched or affirmed by the counterparties in verifying the contract	Yes, to the extent not provided above	No	Yes	No

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