

Regulation SBSR: The Compliance Guide to Reporting Security-based Swaps

SEC has published reporting obligations for SBS without a finalized compliance schedule. Reporting rules for cleared and platform-executed SBS and certain cross-border transactions have not yet been finalized.

On February 11, 2015, the Securities and Exchange Commission (the SEC) issued a final rule regarding regulatory reporting and public dissemination of security-based swaps (*i.e.*, credit default swaps and other equity derivatives) (Regulation SBSR).¹ On the same date, the SEC proposed a phased-in compliance schedule for Regulation SBSR along with additional rules and guidance in respect of Regulation SBSR (the Proposed Amendments Release).² Under Regulation SBSR, security-based swaps entered into or guaranteed by security-based swap dealers, major security-based swap participants or US persons, as well as security-based swaps accepted for clearing by US clearing agencies, must be reported to a registered security-based swap data repository. Subject to certain exclusions and exceptions, the repository must in turn publicly disseminate such information. While the rule becomes effective on May 18, 2015, the phased-in compliance schedule has not yet been finalized. As a result, only certain aspects of Regulation SBSR will become effective on the effective date, and the prescribed regulatory reporting and public dissemination requirements will be effective pending a proposed phased-in compliance period, as discussed further herein. The SEC has requested comment on the Proposed Amendments Release by May 4, 2015.

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I. Summary

This final rulemaking implements the requirements for regulatory reporting and public dissemination of security-based swap transactions³ set forth in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) requiring security-based swaps to be reported to swap data repositories (SDRs) and authorizing the SEC to pass rules implementing data reporting requirements in respect thereof. The SEC initially proposed Regulation SBSR in November 2010, then re-proposed and reopened the comment period for the rule in May 2013.

Regulation SBSR requires the reporting of security-based swap information to registered security-based swap data repositories (SBSDRs), sets out the timeframe in which such swap data must be reported to the SBSDR and establishes the reporting hierarchy for determining which side of a security-based swap transaction must report transaction data to an SBSDR. Additionally, Regulation SBSR sets out business conduct requirements for, security-based swap dealers (SBSDs) and major security-based swap participants (MSBSPs). Each is required to establish and maintain policies and procedures that are reasonably designed to ensure compliance with applicable reporting obligations. Regulation SBSR also imposes reporting obligations for historical security-based swaps (*i.e.*, pre-enactment and transitional security-based swaps), to the extent the reportable information is available regarding such historical security-based swaps.

Regulation SBSR further provides for the public dissemination of security-based swap transaction, volume and pricing information about security-based swaps. Under Regulation SBSR, SBSDRs are required to establish and maintain certain policies and procedures regarding how transaction data are reported and disseminated, and they must also register with the SEC as a securities information processor (an SIP).

Lastly, Regulation SBSR addresses the cross-border application of regulatory reporting and public dissemination requirements, as well as provides a cross-border framework for compliance through a substituted compliance regime.

Effective Date

Regulation SBSR is effective on May 18, 2015, subject to the proposed phased-in compliance period discussed further below.

Compliance Dates

Immediate Compliance. On the Effective Date, compliance with the following provisions of Regulation SBSR will be required: Rule 900 (Definitions); Rule 907 (SBSDR Policies and Procedures); and Rule 909 (Registration of SBSDR as an SIP).

Delayed Compliance. Market participants will benefit from a phased-in compliance schedule for the remaining Regulation SBSR provisions. Below is a summary of the proposed phased-in compliance schedule contained in the Proposed Amendments Release.

- **Proposed Compliance Date 1:** The Regulation SBSR reporting obligations with respect to a particular asset class of a security-based swap would go into effect six months after an SBSDR commences operations for such asset class.⁴ Note that this means that Compliance Date 1 could vary among asset classes. Moreover, historical security-based swaps would need to be reported, to the extent such information is available, **by** Compliance Date 1.

- Proposed Compliance Date 2: The Regulation SBSR public dissemination requirements for a particular asset class would go into effect three months after Compliance Date 1 for such asset class.

The proposed compliance schedule is discussed in detail below under Section VI.

24-hour Timeframe for Reporting

Under the current version of Regulation SBSR, market participants have up to **24 hours** (T+24 hours) following execution to report a security-based swap transaction to an SBSDR, regardless of whether the transaction is a large notional security-based swap (a block trade) or not. Upon receipt of such report, an SBSDR must publicly disseminate the primary trade information for all security-based swaps, subject to some exceptions. The SEC anticipates undertaking further rulemaking to propose and adopt rules related to block trades and the reporting and public dissemination timeframe for non-block trades after analyzing data with respect to security-based swap reporting under a T+24 hour post-trade transparency period. The SEC expects to issue such further rulemaking in 2017 or later.⁵ The reporting timeframe is discussed in detail below under Section II.

Covered Transactions

Regulation SBSR establishes regulatory reporting and public dissemination requirements for security-based swaps that are entered into or guaranteed by SBSDs, MSBSPs or US persons, as well as for security-based swaps cleared by a US clearing agency.⁶ However, the SEC has not yet assigned the reporting duties with respect to all such security-based swap transactions entered into by such persons, nor has the SEC addressed reporting obligations with respect to certain other circumstances. As a result, the SEC has explicitly stated that Regulation SBSR does not apply to the following security-based swaps: (1) cleared security-based swaps, (2) security-based swaps that are executed on a platform⁷ and that will be submitted for clearing (platform-executed security-based swaps), (3) transactions in which there is no US person, SBSD or MSBSP on either side, or (4) transactions in which there is no SBSD or MSBSP on either side, but a US person on only one side (such transactions (the non-covered transactions)).⁸ The SEC has **proposed**, but has not yet finalized, an assignment of reporting duties for both cleared and platform-executed security-based swaps.⁹ No reporting obligation has yet been finalized or proposed under Regulation SBSR for either (1) transactions in which there is no US person, SBSD or MSBSP on either side or (2) transactions in which there is no SBSD or MSBSP on either side, but there is a US person on only one side. The SEC anticipates proposing further rulemaking in respect thereof.¹⁰

Non-covered transactions are not subject to Regulation SBSR until further rulemaking is finalized in respect of such reporting duties and obligations. All security-based swaps other than non-covered transactions are covered transactions and must be reported pursuant to Regulation SBSR.¹¹

II. Regulatory Reporting of Security-based Swaps

Reportable Security-based Swaps

Regulation SBSR requires that the following security-based swaps be reported in accordance therewith:

- US Person Is a Direct Counterparty: Any security-based swap with a direct counterparty that is a US person¹² is subject to reporting and public dissemination under the regulation, regardless of the registration status or domicile of any counterparty on the other side of the transaction.¹³
- Transactions Conducted Through a Foreign Branch or Office: Any security-based swap transaction conducted through a foreign branch of a US person is subject to reporting and public dissemination under the regulation.¹⁴

- Transactions Guaranteed by a US Person: Any security-based swap transaction involving a US person guarantor is subject to reporting and public dissemination under the regulation.¹⁵ A guarantor would fall within the purview of Regulation SBSR if the direct counterparty to the security-based swap has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the guarantor in connection with the security-based swap; the guarantor need not be a participant of a registered SBSDR.¹⁶
- Transactions Involving an SBSD or MSBSP that Is Not a US Person: A security-based swap between a non-US SBSD or MSBSP and another non-US person (which could include another non-US SBSD/MSBSP), and in which neither direct counterparty is guaranteed by a US person, would be subject to regulatory reporting, but **not** public dissemination. When reporting such a transaction, the reporting side would need to ensure that proper policies and procedures are followed to flag such a transaction as not subject to public dissemination.
- Cleared Security-based Swap Transactions: Regulation SBSR requires reporting of security-based swap transactions that are accepted for clearing by a U.S. clearing agency.¹⁷ As adopted, Regulation SBSR does not assign reporting duties for a cleared security-based swap. While the SEC has proposed a reporting hierarchy in the Proposed Amendments Release,¹⁸ this rule is still in **proposed** form and, as a result, a cleared security-based swap is not subject to regulatory reporting until such further rulemaking is finalized.¹⁹
- Platform-executed Security-based Swap Transactions that Will Be Cleared: As adopted, Regulation SBSR does not assign reporting duties for a platform-executed security-based swap that will be submitted for clearing; the SEC has, however, proposed a reporting hierarchy for such platform-executed swaps in the Proposed Amendments Release.²⁰ Note, however, that this rule is still in **proposed** form and, as a result, a platform-executed security-based swap that will be submitted for clearing is not yet subject to regulatory reporting under Regulation SBSR.²¹

TABLE: Application of Regulation SBSR Reporting and Public Dissemination Requirements to Security-Based Swap Transactions

Identity of Security-based Swap Counterparty	Regulatory Reporting	Public Dissemination
US Person Is a Direct Counterparty	Y	Y
Foreign Branch of a US Person Is a Counterparty	Y	Y
US Person Is a Guarantor (i.e., Indirect Counterparty)	Y	Y
Registered Non-US SBSD or MSBSP (and no US Person Direct or Indirect Counterparty)	Y	N
Security-based Swap Accepted for Clearing by a US Clearing Agency (including Platform-executed and Cleared Security-based Swaps)	Y*	Y*

* Note that the Proposed Amendments Release proposes that the US clearing agency be the reporting side for cleared security-based swap transactions, and that the platform upon which the security-based swap was executed be the reporting side for platform-executed security-based swap transactions, but only if such security-based swap is cleared. The assignment of reporting duties for these security-based swaps have not yet been finalized.

No Exemption for Foreign Public Sector Financial Institutions. The SEC has **not** included an exemption from public dissemination under Regulation SBSR for security-based swaps involving foreign public sector financial institutions (FPSFIs); as such, any FPSFI counterparty would be treated as a non-US person under Regulation SBSR.²² For example, if a US person, were to face, or guarantee a non-US person facing, an FPSFI (e.g., the European Central Bank) in a security-based swap transaction, such security-based swap would generally be subject to both regulatory reporting and public dissemination. If a non-US SBSB or MSBSP were to guarantee a non-US person facing an FPSFI in a security-based swap transaction, such security-based swap would be subject to regulatory reporting, but not public dissemination, in accordance with Regulation SBSR.

Assigning Reporting Obligations

Whether or not a security-based swap is subject to regulatory reporting under Regulation SBSR is generally determined by the US person and registration status of the sides of such security-based swap. Note that Regulation SBSR uses the word “side,” rather than “counterparty,” in determining who carries the reporting obligation. The rules define “side” as a direct counterparty (i.e., a primary obligor) and any guarantor of that direct counterparty’s performance who meets the definition of indirect counterparty in connection with the security-based swap,²³ and an “indirect counterparty” as a guarantor of a direct counterparty’s performance of any obligation under a security-based swap such that the direct counterparty on the other side can exercise rights of recourse against the indirect counterparty in connection with the security-based swap.²⁴ Thus, the reporting side of a security-based swap transaction could be determined based on the registration or US person status of a direct counterparty’s guarantor. The SEC notes in the Adopting Release that Rule 908(b) limits the types of counterparties that incur obligations under Regulation SBSR to (1) US persons, (2) SBSBs and (3) MSBSPs; a person that does not fall within one of these categories incurs no duties under Regulation SBSR.²⁵ That is, if a security-based swap must be reported solely because a US person is an indirect counterparty to the transaction, then such US person **guarantor** would be obligated to report the primary and secondary trade information to the SBSDR, even though such US person is not a direct counterparty to the security-based swap transaction.

Hierarchy of Reporting Obligations. For a covered transaction, the reporting side will be determined according to the following hierarchy²⁶:

- If both sides of the security-based swap include an SBSB (even if the SBSB is an **indirect** counterparty), the sides shall select the reporting side.
- If only one side of the security-based swap includes an SBSB (even if the SBSB is an **indirect** counterparty), that side shall be the reporting side.
- If both sides of the security-based swap include an MSBSP (even if the MSBSP is an **indirect** counterparty), the sides shall select the reporting side.
- If one side of the security-based swap includes an MSBSP and the other side includes neither an SBSB nor an MSBSP, the side including the MSBSP (even if the MSBSP is an **indirect** counterparty) shall be the reporting side.
- If both sides of the security-based swap include a US person and neither side includes an SBSB or an MSBSP, the sides shall select which is the reporting side.

Note that because the SEC has **not** yet adopted registration rules for SBSBs and MSBSPs, counterparties shall select which is the reporting side so long as such registration rules are not in place.

Hierarchy of Reporting Duties for Cleared and Platform-executed Security-based Swaps. In the Proposed Amendments Release, the SEC has proposed adding the following reporting hierarchy for cleared and platform-executed security-based swaps:

- Platform-executed Security-based Swaps: For platform-executed security-based swaps that will be submitted for **clearing**, the reporting party shall be the platform on which the transaction was executed. For platform-executed security-based swaps that are **not** cleared, the platform shall not be obligated to report and the reporting sides shall be determined in accordance with the Regulation SBSR reporting hierarchy.
- Cleared Security-based Swaps: For cleared security-based swaps, the reporting side shall be the US clearing agency.²⁷

Continued Reporting Obligation. If a life cycle event pertaining to a security-based swap subsequently occurs which requires reporting, the side that originally reported the initial transaction would have the responsibility to report such an event, except if there is an assignment or novation, in which case the reporting side is re-determined as if a new security-based swap had been executed.²⁸ Life cycle events are discussed further below.

Use of Third Parties in Regulatory Reporting. Reporting sides may engage third-party agents to report transactions to SBSDRs on their behalf.²⁹

Information Required to Be Reported

Under Regulation SBSR, the reporting side must report “primary” and “secondary” trade information to an SBSDR.

Primary Trade Information. While the Commodity Futures Trading Commission (the CFTC) rules enumerate a comprehensive list of required data elements in the rule itself, Rule 901(c) instead generally identifies broad categories of information in the rule and requires the SBSDR to identify in its policies and procedures the specific data elements that must be reported. Minimum data requirements apply and are as follows:³⁰

- Product ID: The reporting side must report the product ID³¹ of a security-based swap, if one is available. If the security-based swap (1) has no product ID or (2) has a product ID that does **not** include certain information, then the following information must be reported:
 - Information that identifies the security-based swap, including the asset class of the security-based swap and specific underlying reference asset(s), reference issuer(s) or reference index
 - The effective date
 - The scheduled termination date
 - The terms of any standardized fixed or floating rate payments, and the frequency of such payments
 - A flag for security-based swaps customized to the extent that the above information does not provide all material identifying information or does not contain the data elements necessary to calculate the price

The product ID required by Regulation SBSR is akin to the unique product identifier (the UPI) required for non-security-based swaps per the swap data regulatory reporting rules promulgated by the CFTC.

- Time of Swap Execution: The reporting side must report the date and time of the execution of the security-based swap, to the second, using Coordinated Universal Time (UTC).
- Price and Up-front Payments: The reporting side must report the price of the security-based swap and the amount of any up-front payments; both figures should include the currency in which they are expressed.
- Notional Amount(s): The reporting side must report the notional amount(s); the figure should include the currency in which the amount(s) is expressed.
- Registered SBSDs: If both sides of the security-based swap include an SBSB, such information must be reported.
- Clearing: The reporting side must indicate whether the direct counterparties intend the security-based swap to be submitted for clearing.
- SBSB-specific Flags: If the SBSB to which the transaction will be reported specifies in its policies and procedures any flags pertaining to the transaction (condition flags), the reporting side must report such flag(s). Condition flags are discussed further below.

Once the primary trade information is reported to an SBSB, a unique transaction ID that is specific to that particular security-based swap transaction will be assigned by either (1) such SBSB receiving the reported security-based swap information or (2) a third party assigning transaction IDs.³² The transaction ID required by Regulation SBSR is akin to the unique swap identifier (the USI) required for non-security-based swaps per the swap data regulatory reporting rules promulgated by the CFTC.

Secondary Trade Information. A reporting party must report, within T+24 hours — and to the extent not already reported — the following secondary trade information:³³

- The counterparty ID or execution agent ID of each counterparty,³⁴ as applicable
- The branch ID, broker ID, execution ID, trader ID and trading desk ID³⁵ of the direct counterparty on the reporting side, if applicable
- The terms of any fixed or floating rate payments (including the terms and contingencies of any such payments)
- For a security-based swap that is not cleared, 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
- Any additional elements included in the agreement between the counterparties that are necessary for a person to determine the market value of the transaction
- If applicable, the name of the registered clearing agency to which the security-based swap will be submitted for clearing
- If the direct counterparties do not intend to submit the security-based swap for clearing, whether they have invoked the exception in Section 3C(g) of the Exchange Act

- If the direct counterparties do not submit the security-based swap for clearing, a description of the settlement terms (including whether the security-based swap is cash-settled or physically settled) and the method for determining the settlement value
- The platform ID,³⁶ if applicable
- If the security-based swap arises from the allocation, termination, novation or assignment of one or more existing security-based swaps, the transaction ID³⁷ of the allocated, terminated, assigned or novated security-based swap(s) (except where a clearing transaction results from the netting or compression of other clearing transactions)

Life Cycle Events. Certain life cycle events must be reported to the same SBSDR to which the original transaction was reported. Regulation SBSR defines a life cycle event to mean any event that would result in a change in the primary or secondary trade information reported to a SBSDR, which would encompass not only post-execution events that impact the counterparties to or the pricing of a security-based swap, but also changes to any other reported information.³⁸ Regulation SBSR identifies the following life cycle events:

- 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 changes 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
- 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)

Regulation SBSR specifically **excludes** the following occurrences from the definition of life cycle event:

- The scheduled expiration of the security-based swap
- A previously described and anticipated interest rate adjustment (e.g., a quarterly interest rate adjustment)
- Any other event that does not result in any change to the contractual terms of the security-based swap

Error Correction. Counterparties to a security-based swap must promptly take action to ameliorate any error that either party might discover in the information reported with respect to that security-based swap. Non-reporting sides must notify the reporting side of such error, and reporting sides must promptly submit an amended report containing corrected data to the SBSDR that received the erroneous transaction report. Note that a counterparty does **not** incur any duty to correct data of which it is unaware.³⁹

Inter-Affiliate Security-Based Swaps. Regulation SBSR applies to all security-based swaps — there is **no** exemption from Regulation SBSR's regulatory reporting (including reporting of historical security-based swaps) or public dissemination requirements for inter-affiliate security-based swaps.

Bunched Orders. The Adopting Release to Regulation SBSR (the Adopting Release) provides guidance with respect to the application of the reporting obligations to bunched orders (*i.e.*, security-based swaps executed by an asset manager on behalf of multiple clients).⁴⁰

- Executed Bunched Orders: A bunched order execution is subject to the same Regulation SBSR reporting hierarchy as all security-based swaps. The reporting side for such bunched order execution must report to an SBSDR the primary and secondary trade information for the bunched order execution, including the notional amount of the bunched order execution.
- Bunched Order Allocation: Upon allocation of a bunched order execution, new security-based swaps are created that must be reported to an SBSDR in accordance with the reporting hierarchy under Regulation SBSR. The reporting side for a security-based swap resulting from an allocation must report the transaction ID of the executed bunched order as part of the report of the new security-based swap; the security-based swaps resulting from the allocation are not, however, required to be reported to the same SBSDR that received the transaction report of the original transaction.⁴¹
- Platform-Executed Bunched Orders: The SEC has also proposed guidance in the Proposed Amendments Release regarding how the Regulation SBSR reporting requirements would apply to platform-executed bunched orders that will be submitted for clearing and also to any resulting cleared security-based swaps following allocation of such bunched order.⁴²

Timeframe for Reporting

Interim 24-Hour Reporting Timeframe. The rules establish an interim phase of Regulation SBSR, during which reporting sides will have T+24 hours following execution of a trade to report a security-based swap transaction.⁴³ If T+24 hours would fall on a day that is not a business day, then T+24 hours means the same time as swap execution on the next business day.⁴⁴ Regulation SBSR contains no end date to this interim period.

- Primary vs. Secondary Trade Information: Both primary and secondary trade information pertaining to a security-based swap must be reported within T+24 hours of swap execution, but both sets of information need not be contained in a single report. Per the SEC in the Adopting Release, a reporting side is not prohibited from reporting primary trade information before reporting secondary trade information, so long as both reports are made within T+24 hours and the SBSDR's policies and procedures so allow.⁴⁵
- Life Cycle Events: Regulation SBSR provides that the reporting timeframe shall be T+24 hours following the occurrence of any life cycle event or adjustment due to such life cycle event.

Timeframe for Reporting of Block Trades. The SEC has **not** yet proposed or adopted rules or thresholds in respect of block trades. The current version of Regulation SBSR requires that **all** security-based swaps, regardless of their notional amount, be reported to an SBSDR within the interim timeframe of T+24 hours following the time of execution.

Finalized Reporting Timeframe. A finalized timeframe for reporting will not be published for several years. Following an analysis period, the SEC anticipates proposing rules that would (1) set block trade thresholds and (2) designate new reporting timeframes specific to block and non-block trades in different asset classes.⁴⁶ Appendix A to Rule 901 sets forth guidelines for SEC staff to collect data during the interim phase and publish a report assessing the impact of T+24 hours post-trade transparency on each asset class of security-based swaps. The deadline for such reports is two years following the initiation of public dissemination by the first SBSDR in each asset class. Once the reports are completed, an

“analysis period” will begin, during which the SEC will consider, among other things, the report and public comments of the industry. Taken together, a finalized timeframe for reporting under Regulation SBSR could take upwards of three years to be published.⁴⁷

Reporting Process

The reporting side of the security-based swap transaction must transmit the primary and secondary trade information in a format required by the SBSDR.

Alternate Recipient of Security-based Swap Information. The reporting party must report the primary and secondary trade information to the SEC if no SBSDR will accept such report.⁴⁸

Unique Identification Codes. Reporting parties must use unique identification codes (UICs) when reporting security-based swap information to an SBSDR.⁴⁹

- Required UICs: The following UICs are specifically required by Regulation SBSR:
 - Counterparty ID
 - Product ID
 - Transaction ID
 - Broker ID
 - Branch ID
 - Trading Desk ID
 - Trader ID
 - Platform ID
 - Ultimate Parent ID⁵⁰
- Duty to Provide Ultimate Parent and Affiliate Information: Participants of an SBSDR have an obligation to provide information sufficient to identify the participant’s ultimate parent(s) and any affiliate(s) that are also participants of the SBSDR and to promptly notify the SBSDR of any changes to reported parent or affiliate information.⁵¹ Note that this obligation falls on **all** participants of an SBSDR (not just reporting sides) and is triggered immediately upon becoming a participant of an SBSDR, rather than allowing a T+24 hour window upon execution of a security-based swap.
- Assigning UICs: UICs shall be assigned as follows:⁵²
 - If an internationally recognized standards-setting system (an IRSS) meeting certain criteria (a) is recognized by the SEC and (b) has assigned a UIC to a person, unit of a person or product (or has endorsed a methodology for assigning transaction IDs), then that UIC must be used by all SBSDRs and their participants in carrying out duties under Regulation SBSR.
 - If (a) the SEC has not recognized an IRSS or (b) the SEC-recognized IRSS has not assigned a UIC to a particular person or thing, then the SBSDR is required to assign a UIC using its own methodology.
 - If the SEC has recognized such a system that assigns UICs to persons: (a) each participant of an SBSDR shall obtain a UIC from or through that system for identifying itself and (b) each participant that acts as a **guarantor** of a direct counterparty’s performance of any obligation under a security-based swap that is required to be reported shall, if the direct counterparty has not already done so, obtain a UIC for identifying the direct counterparty from or through that SEC-

recognized system, but **only if** that system permits third-party registration without a requirement to obtain prior permission of the direct counterparty.

- Internationally Recognized Standards-setting System: The SEC has recognized the Global LEI System (the GLEIS), administered by the Regulatory Oversight Committee (the ROC), as an IRSS for assigning legal entity identifiers (LEIs) under Rule 903.⁵³ The SEC may, on its own initiative or upon request, evaluate other IRSSs and decide whether to recognize such other systems. Note that the current GLEIS framework only assigns LEIs for market participants, meaning that there is not an SEC-recognized IRSS for each and every one of the UICs required by Regulation SBSR (e.g., product ID, transaction ID, trader ID, trading desk ID).⁵⁴

Condition Flags. An SBSDR must establish and maintain written policies and procedures (1) identifying characteristics of and circumstances associated with a security-based swap that could foster a distorted view of the market, (2) establishing flags to denote such characteristics and circumstances, (3) directing reporting participants to apply such flags where appropriate and (4) either applying such flags to disseminated reports or, where applicable, to suppress the report from public dissemination.⁵⁵

- Required Flags: Regulation SBSR provisions requires the following condition flags:
 - *Customized Security-based Swaps.* The reporting side must attach a condition flag if a security-based swap is customized to the extent that other information provided for the security-based swap does not provide all of the material information necessary to identify the customized security-based swap or does not contain the data elements necessary to calculate the price.⁵⁶
 - *Error Correction.* An SBSDR that receives a correction to previously publicly disseminated information must publicly disseminate a corrected transaction report indicating that the report relates to a previously disseminated transaction.⁵⁷
- Additional SEC Guidance: In addition to these two provisions, the SEC enumerates six additional examples that should be included in an SBSDR's list of condition flags:
 - Inter-affiliate security-based swaps
 - Transactions resulting from netting or compression exercises
 - Transactions resulting from a "forced trading session" conducted by a clearing agency
 - Transactions reported more than 24 hours after execution
 - Transactions resulting from default of a clearing member
 - Package trades (*i.e.*, a multi-legged transaction of which a security-based swap constitutes one or more legs)

III. Public Dissemination by Registered SBSDRs

Pursuant to Rule 902(a), an SBSDR must disseminate a transaction report **immediately** upon receipt of information about a security-based swap, except in limited circumstances. Such a report must consist of all primary trade information, plus any condition flag contemplated by the SBSDR's policies and procedures. Note that secondary trade information is **not** publicly disseminated.

SBSDRs' Duty to Disseminate

Regulation SBSR provides SBSDRs with the flexibility to set the format and mode of dissemination through its policies and procedures, as long as the reports of security-based swaps that it publicly

disseminates include the primary trade information, plus any condition flags contemplated by the SBSDR's policies and procedures.

Dissemination of Life Cycle Events. Besides transaction reports of security-based swaps, Regulation SBSR mandates public dissemination by an SBSDR of any life cycle event or adjustment due to a life cycle event.

Use of Third Parties for Public Dissemination. Just as reporting sides may engage third-party agents to report transactions on their behalf, SBSDRs may engage third-party providers to carry out the public dissemination function on their behalf.

Timing of Public Dissemination

An SBSDR must disseminate a transaction report of a security-based swap **immediately** upon receipt of information about the security-based swap, or upon reopening if the SBSDR was closed. The use of "immediately" implies a wholly automated process to (1) accept the incoming information, (2) process the information to assure that only information required to be disseminated is disseminated and (3) disseminate a trade report through electronic means.⁵⁸

Interim Timeframe. The SEC intends for the rules in Regulation SBSR relating to public dissemination to apply only on an **interim** basis and anticipates seeking further public comment regarding the dissemination timeframe as it relates to block trades in connection with its future rulemaking about block thresholds.⁵⁹

Exclusions from Public Dissemination

Non-US SBSD or MSBSP. An uncleared security-based swap transaction which does not include a US person, but does include a non-US SBSD or non-US MSBSP that is a direct counterparty or guarantor on either (or both) sides of a security-based swap transaction is subject to regulatory reporting obligations under Regulation SBSR but is **excluded** from public dissemination by an SBSDR.⁶⁰

US Person Guarantor. As adopted, Regulation SBSR mandates public dissemination of security-based swap transactions if one side consists of a non-US person direct counterparty that is guaranteed by a US person, neither of which is an SBSD or MSBSP, and the other side includes no counterparty that is a US person, SBSD or MSBSP (a covered cross-border transaction); however, the SEC proposed in the Proposed Amendments Release to defer the compliance date with respect to the public dissemination of covered cross-border transactions until the SEC has sought, received and considered comment on whether or not to except covered cross-border transactions from public dissemination in the future. Therefore, while covered cross-border transactions will still be subject to regulatory reporting, such transactions will be excluded from the public dissemination requirement until the SEC has considered an exception for such security-based swap transactions.⁶¹

Non-disseminated Information. Rule 902(c) specifically excludes the following information from the Regulation SBSR public dissemination requirement:⁶²

- Identity of any counterparty⁶³
- Information disclosing the business transactions and market positions of any person⁶⁴
- Historical security-based swaps⁶⁵

- Non-mandatory reports (*i.e.*, any information provided to an SBSDR by or on behalf of a counterparty other than as required by Regulation SBSR)⁶⁶
- Information regarding cleared security-based swap transactions that (1) arise from the acceptance of a security-based swap for clearing by a registered clearing agency or (2) result from netting other clearing transactions are **exempted** from public dissemination⁶⁷
- Information regarding the allocation of a security-based swap. While the termination of a security-based swap that has been publicly disseminated would ordinarily be a life cycle event subject to public dissemination,⁶⁸ Regulation SBSR expressly excludes from public dissemination the fact that an initial security-based swap has been terminated and replaced with several smaller security-based swaps as part of the allocation process.⁶⁹ Note that public dissemination of only the aggregate notional amount of the executed bunched order that is subsequently allocated will satisfy an SBSDR's public dissemination obligation.

Embargo Rule. Additional protections (known as the Embargo Rule) provide that no person can release the information about a security-based swap transaction until the reporting side sends the primary trade information about the security-based swap to an SBSDR. Note, however, that the Embargo Rule would **not** apply to post-trade processors that provide affirmation, confirmation, matching, reporting or clearing services for a security-based swap transaction.⁷⁰

Reporting Side Error. Regulation SBSR requires an SBSDR to, among other things, establish and maintain written policies and procedures directing its participants to apply to the transaction report a **condition flag** designated by the SBSDR to indicate when the report of a transaction is excluded from the public dissemination requirement. If the reporting side for a transaction fails to flag the transaction appropriately in accordance with the regulation, the SBSDR is **not** responsible if such report is publicly disseminated.⁷¹

Public Dissemination of Block Trades

Under the current version of Regulation SBSR, an SBSDR is required, as with all other dissemination-eligible security-based swap transactions, to publicly disseminate a report of a block trade **immediately and automatically** upon receipt of the information from the reporting side. The SEC intends for the rules in Regulation SBSR relating to public dissemination to apply only on an **interim** basis and also anticipates seeking further public comment on issues related to block trades in connection with its future rulemaking about block thresholds.⁷²

IV. Reporting and Dissemination of Historical Security-based Swaps

Regulatory Reporting of Historical Security-based Swaps

To the extent the information is available, Rule 901(i) requires the reporting of (1) any security-based swap executed before July 21, 2010 (*i.e.*, the enactment of the Dodd-Frank Act) the terms of which had not expired as of that date (Pre-enactment Security-based Swaps) and (2) any 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 an SBSDR as required by Regulation SBSR (Transitional Security-based Swaps) (collectively, Historical Security-based Swaps).

Foreign Privacy Laws and Counterparty IDs. The SEC will consider requests from reporting sides for exemptions, pursuant to Section 36 of the Exchange Act, from the requirement to report counterparty IDs of historical security-based swaps executed up to the last day before the effective date of these final

rules. If disclosing the identity of a foreign counterparty would violate a privacy law or blocking statute in the foreign jurisdiction where the transaction occurred, reporting sides can file an exemption request pursuant to Rule 0-12 under the Exchange Act.

Public Dissemination of Historical Security-based Swaps

Regulation SBSR specifically *excludes* from public dissemination those historical security-based swaps reported pursuant to Rule 901(i).⁷³

Life Cycle Events. Life cycle events, however, relating to the primary trade information of historical security-based swaps must, after the public dissemination requirement goes into effect, be publicly disseminated.

Error Correction. Corrections to primary trade information in historical security-based swaps would *not* trigger public dissemination.

V. Additional Obligations of SBSDs, MSBSPs and SBSDRs

Obligations of SBSDs and MSBSPs

SBSDs and MSBSPs are required under Rule 906(c) to establish, maintain and enforce written policies and procedures to support security-based swap transaction reporting. Such policies and procedures must be reasonably designed to ensure compliance with the reporting obligations under Regulation SBSR, and must be reviewed and updated at least annually.⁷⁴ Policies and procedures should address, among other things:

- The reporting process and designation of responsibility for reporting security-based swap transactions
- The process for systematizing orally negotiated security-based swap transactions
- Order management system outages or malfunctions, and when and how back-up systems are to be used in connection with required reporting
- Verification and validation of all information relating to security-based swap transactions reported to an SBSDR
- A training program for employees responsible for security-based swap transaction reporting
- Control procedures relating to security-based swap transaction reporting and designation of personnel responsible for testing and verifying such policies and procedures
- Review and assessment of the performance and operational capability of any third party that carries out any duty required by Regulation SBSR on behalf of the SBSD or MSBSP.⁷⁵

Recordkeeping Requirements. Note that last year the SEC proposed recordkeeping requirements for SBSDs, MSBSPs and broker-dealers, but has not yet finalized any recordkeeping requirements for these security-based swap market participants.⁷⁶

Obligations of SBSDRs

Pursuant to Regulation SBSR, SBSDRs must: (1) establish, maintain and make publicly available written policies and procedures that, among other things, (a) specify the data elements that must be reported⁷⁷

and (b) detail how the SBSDR will receive and publicly disseminate security-based swap information; (2) timestamp, to the exact second, its receipt of any information submitted to it;⁷⁸ (3) register with the SEC as an SIP (which subjects the SBSDR to additional regulatory oversight);⁷⁹; (4) provide, upon the SEC's request, information or reports related to the timelines, accuracy and completeness of data reported to it pursuant to Regulation SBSR;⁸⁰ and (5) establish written policies and procedures for the assignment of UICs.⁸¹

SBSDR Operating Hours

An SBSDR must be available to receive and disseminate security-based swap information on a near-continuous basis, with certain exceptions.⁸² An SBSDR must provide participants and the public with reasonable advance notice of its "normal" closing hours (which must align with those times that the US market and major foreign markets are inactive) and "special" closing hours, except in cases in which necessary system maintenance cannot wait until normal closing hours. Primary trade information reported during closing hours must be publicly disseminated by the SBSDR immediately upon system reopening. If, for any reason, the SBSDR could not receive and hold in queue reported data, it must send a notice to all participants stating as much; upon receiving such notice, reporting sides must promptly report such data to the SBSDR.

Error Correction

Under Rule 905(b), an SBSDR is required to take the following steps to correct information and, if appropriate, re-disseminate corrected information:

- **Verification:** If an SBSDR either discovers an error in the security-based swap information or receives notification of an error from a reporting side, the SBSDR is required to verify the accuracy of the terms of the security-based swap.
- **Correction:** Following verification of corrected information, an SBSDR must promptly correct the information in its system.
- **Re-dissemination:** If the erroneous information (1) contains any primary trade information and (2) is not relating to a transaction deemed dissemination-ineligible,⁸³ the SBSDR must publicly disseminate a corrected transaction report of the security-based swap promptly following verification, along with an indication that the report relates to a previously disseminated transaction.

Historical Security-based Swaps. SBSDRs are **not** required to identify broker IDs, branch IDs, execution agent IDs, trading desk IDs and trader IDs pertaining to historical security-based swaps as missing or to communicate to non-reporting side participants that such IDs are missing.⁸⁴

Dispute Resolution. The SEC has separately adopted Rule 13n-5(b)(6) under the Exchange Act, requiring an SBSDR to establish procedures and provide facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions that are recorded in the SBSDR. Because the SEC interprets the term "error" in Rule 905 as one which both sides to the transaction would reasonably regard as such, the counterparties can use an SBSDR's procedures and facilities established under Rule 13n-5(b)(6) to attempt to resolve the dispute; following a determination that an error exists, Regulation SBSR would require the counterparties to correct the error.⁸⁵ Note that the SBSDR itself is **not** required to resolve the dispute under either Rule 13n-5(b)(6) or Rule 905.

VI. Proposed Compliance Dates

The Proposed Amendments Release contains a proposed compliance schedule for the following Regulation SBSR provisions:

- Rule 901 (Reporting Obligations)
- Rule 902 (Public Dissemination)
- Rule 903 (Coded Information)
- Rule 904 (Operating Hours)
- Rule 905 (Error Correction)
- Rule 906 (Other Duties of Participants and Guarantors)
- Rule 908 (Cross-Border Matters)

Until the SEC finalizes the proposed phased-in compliance schedule, market participants will **not** be required to comply with these rules. Proposed Compliance Date 1 relates to the regulatory reporting by market participants of both newly executed and historical security-based swaps, while proposed Compliance Date 2 relates to the public dissemination by SBSDRs of newly executed security-based swap transaction data.

Proposed Compliance Date 1

Regulatory Reporting. Under the proposed compliance schedule, reporting sides would be required to begin reporting all newly executed security-based swaps in a particular asset class **six months** after the first SBSDR commences accepting report of security-based swaps in such asset class (Compliance Date 1).

Life Cycle Events. After Compliance Date 1, reporting sides would also have a duty to report to the same SBSDR any life cycle events of any security-based swaps that previously had been required to be reported.

Pre-Commencement Compliance Requirements. The following compliance requirements would have to be met **by** Compliance Date 1:

- Reporting of Historical Security-based Swaps
- Implementing policies and procedures for SBSDRs, registered clearing agencies and platforms
- Identifying missing UIC information
- Providing ultimate parent and affiliate information⁸⁶

Historical Security-based Swaps. Leading up to Compliance Date 1, participants would be required to report to an SBSDR any life cycle event or error correction pursuant to Rules 901(e) and 905, respectively, regarding any historical security-based swaps that are so reported. However, prior to Compliance Date 1, such reports would **not** be subject to public dissemination by the SBSDR.

Proposed Compliance Date 2

Under the proposed compliance schedule, each operating SBSDR in a particular asset class would be required to comply with the following Regulation SBSR requirements for all dissemination-eligible security-based swaps in such asset class within three months following Compliance Date 1 (Compliance Date 2):

- Rule 902 (Public Dissemination)
- Rule 904(d) (requiring dissemination of transaction reports held in queue during an SBSDR's normal or special closing hours)
- Rule 905 (Error Correction)

In the Proposed Amendments Release, the SEC refers to Compliance Date 2 as the date upon which SBSDRs will be required to publicly disseminate **newly executed** security-based swap transactions; thus, the security-based swap information reported between Compliance Date 1 and Compliance Date 2 would **not** be subject to public dissemination, except as pertains to any life cycle events occurring on or after Compliance Date 2.⁸⁷

VII. Substituted Compliance

Rule 908(c) establishes a “substituted compliance” framework whereby the SEC may issue a substituted compliance determination with respect to a foreign jurisdiction’s regulatory reporting and public dissemination requirements for security-based swaps if it finds that the corresponding requirements of such foreign regulatory system are both (1) comparable to the relevant provisions of Regulation SBSR and (2) accompanied by an effective supervisory and enforcement program administered by the relevant foreign authorities. The SEC has not yet made any assessment regarding whether any particular foreign jurisdiction’s requirements for regulatory reporting and public dissemination of security-based swaps are comparable to Regulation SBSR. In making substituted compliance determinations, the SEC “intends to focus on regulatory outcomes as a whole[.]” rather than making a rule-by-rule comparison.⁸⁸ Similar to the CFTC substituted compliance framework, interested parties or foreign financial regulators may submit requests for such substituted compliance determinations. Prior to issuing a substituted compliance order relating to regulatory reporting and public dissemination with respect to a foreign jurisdiction, the SEC must have entered into a supervisory and enforcement memorandum of understanding (an MOU) or other arrangement with the relevant foreign financial regulatory authority or authorities under such foreign financial regulatory system addressing supervisory and enforcement cooperation. The regulation also sets out that in order to issue a substituted compliance determination the SEC must make the following findings:

- The data elements 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 manner of and timeframe for reporting is comparable to those under Regulation SBSR.
- The SEC has direct access to the security-based swap data held by a trade repository or foreign regulatory authority to which security-based swaps are reported pursuant to the rules of that foreign jurisdiction.
- The requirements imposed by the foreign jurisdiction on repositories regarding (a) data collection and maintenance, (b) systems capacity, integrity, resiliency, availability and security and (c) recordkeeping are comparable to the requirements imposed on SBSDRs by Regulation SBSR.

The SEC also has discretion to withdraw or modify such substituted compliance determination after appropriate notice and opportunity to comment.⁸⁹

VIII. Next Steps

While the SEC has completed a huge milestone in its release of Regulation SBSR, the market will have some time before the regulation goes into effect. As discussed, market participants will not need to comply with the reporting obligations under Regulation SBSR until a compliance schedule is finalized. In the Proposed Amendments Release, the SEC has proposed a phased-in compliance schedule for security-based swap transactions as well as reporting obligations for cleared security-based swaps and platform-executed security-based swaps. The comment period for the Proposed Amendments Release ends May 4, 2015. Further, the SEC expects to request further comments in respect of reporting obligations for (1) security-based swaps in which there is no US person, SBSD or MSBSP on either side and (2) security-based swaps in which there is a US person on only one side and no SBSD or MSBSP on either side.

Finally, once the compliance schedule is finalized and Regulation SBSR becomes effective, it will impose a T+24 hour interim reporting timeframe for all covered security-based swap transactions. The SEC anticipates proposing rules concerning block and non-block trades after analyzing and studying the market's reaction to the T+24 hour interim reporting timeframe, though such rulemaking will likely not occur for several years after Regulation SBSR comes into effect.

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Endnotes

- ¹ Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, 80 Fed. Reg. 14564 (March 19, 2015) (to be codified at 17 C.F.R. pt. 242), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2015-03-19/pdf/2015-03124.pdf> (Regulation SBSR Adopting Release).
- ² Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, 80 Fed. Reg. 14740 (proposed March 19, 2015) (to be codified at 17 C.F.R. pt. 242), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2015-03-19/pdf/2015-03125.pdf> (Proposed Amendments Release). In the Proposed Amendments Release, the SEC proposed the following amendments and guidance: a new compliance schedule for those portions of Regulation SBSR for which the SEC has not specified a compliance date; reporting requirements for security-based swaps executed on trade execution platforms; reporting requirements for security-based swaps subject to clearing; a rule prohibiting SBSDRs from charging fees for or imposing usage restrictions on the users of the security-based swap transaction data that they are required to publicly disseminate; SEC guidance regarding the application of Regulation SBSR to prime brokerage transactions; and SEC guidance for the reporting and public dissemination of allocations of cleared security-based swaps. The latter three proposals are outside the scope of this Alert and will not be discussed further herein. On February 11, 2015, the SEC also finalized rules regarding SBSDR registration, duties and core principles, as well as adopted new rules and a new registration form for SBSDRs, the SEC is amending several of its existing rules and regulations in order to accommodate SBSDRs. Security-Based Swap Data Repository Registration, Duties, and Core Principles, 80 Fed. Reg. 14438 (March 19, 2015) (to be codified at 17 C.F.R. pts. 200, 232, 240 and 249), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2015-03-19/pdf/2015-03127.pdf>.
- ³ The Exchange Act defines “security-based swap” as any agreement, contract or transaction that (1) is a “swap” as defined under Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) and (2) is based on:
An index that is a narrow-based security index, including any interest therein or on the value thereof;
A single security or loan, including any interest therein or on the value thereof; or
The occurrence, nonoccurrence or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index (provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer).
- ⁴ Regulation SBSR defines “asset class” in Rule 900(b) as those security-based swaps in a particular broad category, including, but not limited to, credit derivatives and equity derivatives.
- ⁵ Regulation SBSR Adopting Release, 80 Fed. Reg. at 14616-14617.
- ⁶ Rule 908(a)(1).

7 Rule 900(v) defines “platform” as a national securities exchange or security-based swap execution facility that is registered or exempt from registration.

8 See Regulation SBSR Adopting Release, 80 Fed. Reg. at 14566-14567.

9 See proposed Rule 901(a)(1) and (2)(i) (Proposed Amendments Release); see also Regulation SBSR Adopting Release, 80 Fed. Reg. at 14568 n. 21.

10 Regulation SBSR Adopting Release, 80 Fed. Reg. at 14568 n. 21.

11 See *Id.* at 14566-14567.

12 Rule 900(ss) defines “US Person” as having the same meaning as in Rule 3a71-3(a)(4) under the Exchange Act. Rule 3a71-3(a)(4)(i) defines US Person as: a natural person resident in the United States; 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; an account (whether discretionary or non-discretionary) of a US person; or any estate of a decedent who was a resident of the United States at the time of death. Regulation SBSR incorporates by reference Rule 3a71-3(a)(4)(iv) under the Exchange Act, which allows a person to rely on a counterparty’s representation that the counterparty is not a US person, unless such person knows or has reason to know that the representation is accurate.

13 Rule 908(a)(1)(i).

14 *Id.*

15 Rule 908(a)(1)(i)-(ii).

16 Rule 900(p); see Regulation SBSR Adopting Release, 80 Fed. Reg. at 14582 n. 139. Note that the meaning of the terms “guarantee,” “recourse,” and any related terms used in Regulation SBSR is the same as the meaning of those terms in the Cross-Border Adopting Release and the rules adopted therein. The Cross-Border Adopting Release uses the term “guarantee” to refer to an arrangement pursuant to which one party to a security-based swap transaction has recourse to its counterparty’s parent, other affiliate or guarantor with respect to the counterparty’s obligations owed under the transaction. Note that the use of the term “guarantee” in the Cross-Border Adopting Release (and, by reference, Regulation SBSR) may describe economic relationships that are different from “guarantee” under Section 2(a)(1) of the Securities Act (15 U.S.C. 77(b)(1)). *Application of “Security-Based Swap Dealer” and “Major Security-Based Swap Participant” Definitions to Cross-Border Security-Based Swap Activities*, 79 Fed. Reg. 47278, 47289 n. 100-101 (Aug. 12, 2014) (to be codified at 17 CFR Parts 240, 241 and 250), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-08-12/pdf/R1-2014-15337.pdf> (Cross-Border Adopting Release).

17 Rule 908(a)(1)(ii).

18 Regulation SBSR Adopting Release, 80 Fed. Reg. at 14654.

19 *Id.* at 14566-14567.

20 *Id.* at 14654.

21 *Id.* at 14566-14567.

22 For SEC commentary, see *Id.* at 14664-14666. Note, however, that Regulation SBSR incorporates by reference Rule 3a71-3(a)(4)(iii) under the Exchange Act, which provides that the following entities are **NOT** considered US persons: the International Monetary Fund; the International Bank for Reconstruction and Development; the Inter-American Development Bank; the Asian Development Bank; the African Development Bank; the United Nations; the agencies and pension plans of any of the foregoing; and any other similar international organizations and their agencies and pension plans.

23 Rule 900(hh).

24 Rule 900(p).

25 Regulation SBSR Adopting Release, 80 Fed. Reg. at 14601, 14652-14653.

26 Rule 901(a)(2)(ii).

27 See proposed Rule 901(a)(1) and (2)(i) (Proposed Amendments Release); see also Regulation SBSR Adopting Release, 80 Fed. Reg. at 14568 n. 21.

28 Regulation SBSR Adopting Release, 80 Fed. Reg. at 14568 n. 21, 14640. The reporting obligation for life cycle events is contained in Rule 901(e).

29 Rule 901(a); see Regulation SBSR Adopting Release, 80 Fed. Reg. at 14602.

30 Rule 901(c).

31 Rule 900(bb) defines “product ID” as the UIC assigned to a product, with “product” being defined in Rule 900(aa) as a group of security-based swap contracts each having the same material economic terms except those relating to price and size.

32 Rule 901(g).

33 Rule 901(d).

34 Rule 900 provides the following definitions: “counterparty ID” means the UIC assigned to a counterparty to a security-based swap and “execution agent ID” means the UIC assigned to any person other than a broker or trader that facilitates the execution of a security-based swap on behalf of a direct counterparty

35 Rule 900 provides the following definitions: “branch ID” means the UIC assigned to a branch or other unincorporated office of a participant; “broker ID” means the UIC assigned to a person acting as a broker for a participant; “trader ID” means the UIC assigned to a natural person who executes one or more security-based swaps on behalf of a direct counterparty; and “trading desk ID” means the UIC assigned to the trading desk of a participant, with “trading desk” being defined as, with respect to a counterparty, the smallest discrete unit of organization of the participant that purchases or sells security-based swaps for the account of the participant or an affiliate thereof.

36 Rule 900(w) defines “platform ID” as the UIC assigned to a platform on which a security-based swap is executed.

37 Rule 900(mm) defines “transaction ID” as the UIC assigned to a specific security-based swap transaction.

38 Rule 901(e).

39 Regulation SBSR Adopting Release, 80 Fed. Reg. at 14642.

40 *Id.* at 14625-14627.

41 Rule 901(d)(10).

42 Proposed Amendments Release, 80 Fed. Reg. 14753-14755. In the Proposed Amendments Release, the SEC has also proposed guidance regarding the application of the Regulation SBSR reporting requirements to prime brokerage transactions. The treatment of prime brokerage transactions is outside the scope of this Client Alert.

43 Rule 900(ii) defines “time of execution” as the point at which the counterparties to a security-based swap become irrevocably bound under applicable law.

44 Rule 901(j); see Regulation SBSR Adopting Release, 80 Fed. Reg. at 14568.

45 Regulation SBSR Adopting Release, 80 Fed. Reg. at 14596 n. 269.

46 *Id.* at 14568, 14616-14625.

47 The comment period on proposed Compliance Date 1 will not even close until May 3, 2015 — once the proposed phased-in compliance schedule is finalized, it will still be six months following commencement of operations in a particular asset class by an SBSDR before Commencement Date 1. The two-year clock on SEC staff data collection starts running on Commencement Date 1 for each asset class, with the duration of the subsequent analysis period not being defined or constrained in the Regulation SBSR Adopting Release. Once the SEC does propose new rules pertaining to block trades and reporting timeframes, it will still have to receive public comment before finalizing the new timeframe. *Id.*

48 Rule 901(b).

49 Rule 903(b), read together with Rule 901(h) (Format of Reported Information), clarifies that a reporting side may provide coded information to an SBSDR only to the extent permitted by the SBSDR and only in a format required by the SBSDR; as such, the reporting side may **not** exercise its own discretion when selecting codes to use in its reports to the SBSDR, regardless of whether the codes otherwise comport with Rule 903. Regulation SBSR Adopting Release, 80 Fed. Reg. at 14635.

50 Rule 900(oo) defines “ultimate parent ID” as the UIC assigned to an ultimate parent of a participant.

51 Rule 906(b). Rule 900 provides the following definitions: “ultimate parent” means a legal person that controls a participant and that itself has no parent; “parent” means a legal person that controls a participant; and “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise. Control is presumed if any of the following apply to the person in question: is a director, general partner or officer exercising executive responsibility (or having similar status or functions); directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities; or in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25 percent or more of the capital.

52 Rule 903(a).

53 Regulation SBSR Adopting Release, 80 Fed. Reg. at 14631-14632.

54 The International Organisation for Standardisation (the ISO), which published the definition of and structured the code for LEIs, has defined the term “legal entity” (*i.e.*, eligible to obtain an LEI) to include, but not be limited to, “unique parties that are legally or financial responsible for the performance of financial transactions or have the legal right in their jurisdiction to enter independently into legal contracts, regardless of whether they are incorporated or constituted in some other way (*e.g.*, trust, partnership, contractual). The definition excludes natural persons, but includes governmental organizations and supranationals.” See <http://www.lei.org/lei.htm>.

55 Rule 907(a)(4).

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

57 Rule 905(b)(2).

58 Regulation SBSR Adopting Release, 80 Fed. Reg. at 14607.

59 *Id.* at 14568, 14616-14625.

60 Rule 908(a)(2); Rule 902(c)(5).

61 Regulation SBSR Adopting Release, 80 Fed. Reg. at 14652-14653; *see* Proposed Amendments Release, 80 Fed. Reg. at
14763 n. 140; *see also* Rule 908(a)(1)(i).

62 Rule 902(c)(1).

63 *Id.*

64 Rule 902(c)(2).

65 Rule 902(c)(3).

66 Rule 902(c)(4).

67 Rule 902(c)(6).

68 Rule 902(a).

69 Rule 902(c)(7); *see* Regulation SBSR Adopting Release, 80 Fed. Reg. at 14610; *see also* Proposed Amendments Release, 80
Fed. Reg. at 14753-14755.

70 Rule 902(d).

71 Rule 907(a)(4)(iv).

72 Regulation SBSR Adopting Release 80 Fed. Reg. at 14568, 14616-14625.

73 Rule 902(c)(3).

74 Rule 906(c).

75 Regulation SBSR Adopting Release, 80 Fed. Reg. at 14648.

76 *See* Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants,
and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers, 79 Fed. Reg. 25194 (proposed May 2, 2014) (to be
codified at 17 CFR Parts 240 and 249), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2014-05-02/pdf/2014-09108.pdf>.

77 Rule 901(c)-(d).

78 Regulation SBSR does **not** require a precise time stamp of the moment the security-based swap transaction was **executed**.
Rule 901(f).

79 Rule 909; registering as an SIP would subject an SBSDR to Section 11A(b)(5) of the Exchange Act (requiring a registered SIP
to notify the SEC whenever it prohibits or limits any person's access to its services, and giving the SEC the authority to require
the SIP to provide access to a person whose access had been so prohibited or limited by the SIP). *See* Regulation SBSR
Adopting Release, 80 Fed. Reg. at 14668-14669.

80 Rule 907(e).

81 Rule 903.

82 Rule 904.

83 Rules 902(c) and 908(a)(2).

84 Regulation SBSR Adopting Release, 80 Fed. Reg. at 14645; *see also* Rule 906(a).

85 Regulation SBSR Adopting Release, 80 Fed. Reg. at 14642.

86 Proposed Amendments Release, 80 Fed. Reg. at 14764-14765; *see also* Rule 906.

87 *See* Proposed Amendments Release, 80 Fed. Reg. at 14769.

88 Regulation SBSR Adopting Release, 80 Fed. Reg. at 14657.

89 Rule 908(c)(2)(iii); *see* Regulation SBSR Adopting Release, 80 Fed. Reg. at 14659-14663.