

MEMO# 29893

May 5, 2016

SEC Considers Security-Based Swap Data Repository Application from ICE Trade Vault

[29893]

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TO:

DERIVATIVES MARKETS ADVISORY COMMITTEE No. 17-16
ICI GLOBAL TRADING & MARKETS COMMITTEE No. 16-16

RE:

SEC CONSIDERS SECURITY-BASED SWAP DATA REPOSITORY APPLICATION FROM ICE TRADE VAULT

ICE Trade Vault has submitted an application to operate a security-based swap data repository (“SDR”) with the Securities and Exchange Commission (“SEC”). [1] If a fund is counterparty to a trade reported to ICE Trade Vault, it appears that the fund might be required to become a “Participant” of the SDR, which could result in the fund incurring costs or reporting obligations under ICE Trade Vault’s rulebook that the SEC did not contemplate when it adopted Regulation SBSR or its SDR registration rules (“Regulation SBSR”). [2] The comment period on ICE Trade Vault’s SDR application closes on May 31, 2016. We intend to comment on the application. If you have specific concerns with the application or the rulebook of ICE Trade Vault, please contact George Gilbert at george.gilbert@ici.org by May 13.

Regulation SBSR establishes a dual-sided reporting regime for security-based swaps. One side of the trade (known as the “reporting side”) must report the economic details of the trade, but the other side (the “non-reporting side”) is responsible for reporting key identifiers for its side of the transaction, including any applicable codes that identify the side’s execution agent, trading desk, and trader. [3] Under Regulation SBSR, the reporting side for a security-based swap may report the transaction to the SDR of its choice. The non-reporting side must make its report to the SDR chosen by the reporting side. [4] A fund will seldom, if ever, be a reporting side under Regulation SBSR, [5] so the fund will be

required to satisfy its reporting obligations by reporting to the SDR chosen by its counterparty.

It is not clear whether a non-reporting side would be required to become a “Participant” of ICE Trade Vault to report any applicable information. ICE Trade Vault’s rulebook states that access to SDR services is provided to a party that has executed a “Participant Agreement” in effect with ICE Trade Vault. [6] The rulebook also appears to contemplate a mechanism for a non-reporting side that is not a Participant to contact the SDR and request access to ICE Trade Vault SDR services. [7]

If ICE Trade Vault rules require a non-reporting side to become a Participant, that side would need to sign the ICE Trade Vault Participant Agreement and agree to comply with all provisions of the SDR rulebook. [8] These documents impose various requirements on Participants, including using ICE Trade Vault’s error and dispute resolution processes and verifying that all trade information is complete and accurate. Participants also must adhere to the ICE Trade Vault fee schedule, which imposes a minimum charge on all participants with at least one uncleared transaction warehoused at the SDR. The application also provides certain information about the steps required to connect to the SDR, the data elements that the SDR intends to collect, and the process the SDR will follow to disseminate publicly reported data.

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endnotes

[1] Notice of Filing of Application for Registration as a Security-Based Swap Data Repository, Exchange Act Release No. 77699 (Apr. 22, 2016), 82 FR 25475 (April 28, 2016). The application applies only to credit security-based swaps. ICE Trade Vault does not propose to operate a SDR for security-based swaps that reference equities.

[2] See 17 CFR 240.13n-1-240.13n-11 (the SDR registration rules); 17 CFR 242.900-909 (Regulation SBSR).

[3] See 17 CFR 242.906(a).

[4] A non-reporting side also may be able to negotiate with its counterparty for the reporting side to provide the applicable information to the SDR.

[5] See 17 CFR 242.901(a) (establishing a reporting hierarchy for security-based swaps that requires a security-based swap dealer to report an uncleared transaction to which it is a counterparty; a buy-side entity would be the reporting side only if the swap is uncleared and the other counterparty is also a buy-side entity).

[6] See Rule 3.1.1.

[7] See Rule 4.10.

[8] These documents are available on the SEC's website at <https://www.sec.gov/rules/other/2016/ice-trade-vault-form-sdr.htm>.

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