

MEMO# 28913

April 20, 2015

SEC Finalizes Rules on the Reporting and Dissemination of Security-Based Swap Information

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 14-15
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 27-15
INVESTMENT ADVISER MEMBERS No. 10-15
SEC RULES MEMBERS No. 25-15 RE: SEC FINALIZES RULES ON THE REPORTING AND DISSEMINATION OF SECURITY-BASED SWAP INFORMATION

The Securities and Exchange Commission (“SEC” or “Commission”) recently adopted rules under the Securities Exchange Act of 1934 (“1934 Act”) governing the reporting and dissemination of security-based swap (“SBS”) information (“Regulation SBSR”). [\[1\]](#) The final rules implement the requirements for regulatory reporting and public dissemination of SBS. In a companion release, the Commission has proposed additional rules, amendments, and guidance relating to Regulation SBSR. [\[2\]](#) On the same day, the Commission also adopted rules regarding swap data repository (“SDR”) registration, duties, and core principles. [\[3\]](#)

The effective date of Regulation SBSR is May 18, 2015, but only certain elements become effective on this date. A phased-in compliance schedule for much of Regulation SBSR was proposed in the Proposed Rules SBSR. This memorandum briefly summarizes Regulation SBSR and highlights some of the relevant issues for registered funds.

Reporting Rules

The adopted rules require that general categories of information be reported; the rules do not list specific data elements that must be reported. Instead, the rules require each registered SDR to establish, maintain, and make publicly available policies and procedures that, among other things, specify the data elements that must be reported. Under the adopted rules, if no registered security-based SDR exists that will accept the report, the reporting side is responsible for reporting the transaction to the Commission.

Regulation SBSR requires reporting of all SBS except for the following four exceptions:

- Clearing transactions;

- SBS transactions executed on a platform that will be submitted to clearing;
- Transactions where there is no U.S. person, registered SBS dealer, or registered major SBS participant on either side;
- Transactions where there is no registered SBS dealer or registered major SBS participant on either side and there is a U.S. person on only one side.

Regulation SBSR did not adopt final reporting requirements for clearing transactions and SBS that are executed on a platform and that will be submitted to clearing. The SEC has proposed further amendments to Regulation SBSR in these two areas. [\[4\]](#)

Reporting Hierarchy

Under Regulation SBSR, the duty to report is assigned to one side of the transaction. This duty to report is typically based on the registration status of the direct and indirect counterparties to the transaction. The designated reporting side must submit information to a registered SDR.

The reporting side generally will be determined as follows:

- If both sides of the SBS include a registered SBS dealer, the sides shall select the reporting side.
- If only one side of the SBS includes a registered SBS dealer, that side shall be the reporting side.
- If both sides of the SBS include a registered major SBS participant, the sides shall select the reporting side.
- If one side of the SBS includes a registered major SBS participant and the other side includes neither a registered SBS dealer nor a registered major SBS participant, the side including the registered major SBS participant shall be the reporting side.
- If neither side of the SBS includes a registered SBS dealer or registered major SBS participant, but both sides include U.S. persons, the sides shall select the reporting side.

Similar to the rules of the Commodity Futures Trading Commission, the reporting hierarchy places the responsibility to report on registered entities, such as SBS dealers. The SEC, however, has not finalized the requirements for registration of SBS dealers and major SBS participants. Therefore, there are currently no SBS dealers registered with the SEC.

Unique Identification Codes

Regulation SBSR requires registered SDRs to use unique identification codes (“UICs”) to specifically identify a variety of persons and things. The following UICs are required: counterparty ID, product ID, transaction ID, broker ID, branch ID, trading desk ID, trader ID, platform ID, and ultimate parent ID.

Timeframe for Reporting

Currently, Regulation SBSR requires an SBS be reported at any point up to 24 hours after the time of execution of the swap. The time of execution is defined as the time at which the counterparties become bound to the terms of the transaction.

Reporting Obligations for Historical SBS

Under Regulation SBSR, any historical SBS (i.e., pre-enactment SBS or transitional SBS in a particular asset class), [\[5\]](#) to the extent that such information is still available, must be reported by the reporting side to a registered SDR. Additionally, the reporting side should note whether the SBS was open as of the date of the report.

Public Dissemination of SBS Transaction Data

The Commission has adopted rules that require a registered SDR to disseminate a transaction report of an SBS “immediately upon receipt of information about the SBS, or upon re-opening following a period when the registered SDR was closed.” The Commission has interpreted “immediately” in this context to imply a wholly automated process to accept the incoming information, process the information to assure that only information required to be disseminated is disseminated, and disseminate a trade report through electronic means.

There are seven exclusions from the public dissemination rule adopted by Regulation SBSR:

- A registered SDR is explicitly prohibited from disseminating the identity of any counterparty. A registered SDR should disseminate a transaction report that consists only of information reported pursuant to Section 242.901(c), [\[6\]](#) plus any condition flags contemplated by the SDR’s policies and procedures.
- A registered SDR is prohibited from disseminating any information disclosing the business transactions and market positions of any person with respect to an SBS that is not cleared at a clearing agency and that is reported to an SDR.
- A registered SDR does not have to publicly disseminate reports of historical SBS reported pursuant to Regulation SBSR.
- A registered SDR is prohibited from disseminating a non-mandatory report (i.e., any information provided to an SDR by or on behalf of a counterparty other than as required by Regulation SBSR).
- A registered SDR is prohibited from disseminating any information regarding an SBS that is subject to regulatory reporting but not public dissemination under final Rule 908(a) of Regulation SBSR.
- A registered SDR is prohibited from disseminating any information regarding certain types of clearing transactions (i.e., an SBS that has a registered clearing agency as a direct counterparty).
- A registered SDR is prohibited from disseminating any information regarding the allocation of an SBS. Instead, the SDR will disseminate only the aggregate notional amount of the executed bunched order that is subsequently allocated.

Block Trades and the Interim Phase of Regulation SBSR

For the interim period, under the current version of Regulation SBSR, a registered SDR is required to publicly disseminate a block trade immediately after it is received. Like all other SBS transactions, the reporting sides will have up to 24 hours after the time of execution to report a transaction.

The Commission intends to continue this practice on an interim basis until it conducts future rulemaking on block trades.

Cross-Border Concerns

There are three scenarios in which Regulation SBSR applies to cross-border SBS and counterparties of SBS:

- Any SBS involving a U.S. person, either as a direct counterparty or as a guarantor, must be reported to an SDR, regardless of where the transaction took place.
- Any SBS involving a registered SBS dealer or a registered major SBS participant, either as a direct counterparty or as a guarantor, must be reported to an SDR, regardless of where the transaction took place.
- Any SBS that is accepted for clearing by a registered clearing agency having its

principal place of business in the United States must be reported to an SDR, regardless of the registration status or U.S. person status of the counterparties and regardless of where the transaction is executed.

Interested parties are allowed to request a substituted compliance determination with respect to a foreign jurisdiction's regulatory reporting and public dissemination standards so that such parties can comply with those rules in lieu of the Commission's reporting rules.

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endnotes

[1] Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, 80 FR 14564 (Mar. 19, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-03-19/pdf/2015-03124.pdf> (“Final Rules SBSR”).

[2] Proposed Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, 80 FR 14564 (Mar. 19, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-03-19/pdf/2015-03124.pdf> (“Proposed Rules SBSR”). For background on the Proposed Rules, please see ICI Memorandum No. 28758 (Feb. 23, 2015), available at http://www.ici.org/my_ici/memorandum/memo28758.

[3] Regulation SDR – Security-Based Swap Data Repository Registration, Duties, and Core Principles, 80 FR 14438 (Mar. 19, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-03-19/pdf/2015-03127.pdf> (“Final Rules SDR”). For a summary of Final Rules SDR, see ICI Memorandum No. 28857 (Mar. 2, 2015), available at http://www.ici.org/my_ici/memorandum/memo28857.

[4] See Proposed Rules SBSR, *supra* note 2.

[5] Pre-enactment SBS are defined as SBS entered into before the date of enactment of the Dodd-Frank Act. Transitional SBS are defined as SBS entered into after the date of enactment but before Regulation SBSR becomes fully operative.

[6] Section 242.901(c) refers to primary trade information. Primary trade information includes the product ID; the date and time of the execution; the price; the notional amounts; an indication if both sides of the SBS include a registered SBS dealer; whether the counterparties intend that the SBS will be submitted to clearing; and any flags pertaining to the transaction that are specified in the policies and procedures of the SDR to which the transaction will be reported.