

MEMO# 30151

August 19, 2016

SEC Adopts Amendments to Regulation SBSR

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 42-16
ICI GLOBAL TRADING & MARKETS COMMITTEE No. 35-16
SEC RULES MEMBERS No. 45-16
SECURITIES OPERATIONS ADVISORY COMMITTEE RE: SEC ADOPTS AMENDMENTS TO
REGULATION SBSR

The Securities and Exchange Commission (“SEC” or “Commission”) recently adopted amendments and issued guidance to its rules regarding the reporting and public dissemination of security-based swap information, known as Regulation SBSR. [\[1\]](#) The amendments and guidance reduce modestly potential reporting obligations for funds and other market participants that are not deemed “reporting sides.” The rulemaking also covers a range of issues not fully addressed when the Commission adopted Regulation SBSR in 2015, [\[2\]](#) including the application of Regulation SBSR to security-based swaps between non-U.S. persons that are arranged, negotiated, or executed in the United States and the compliance deadline for the regulation. [\[3\]](#)

Background

In 2015, the SEC adopted Regulation SBSR, which establishes requirements for regulatory reporting and public dissemination of security-based swap transactions. Regulation SBSR requires regulatory reporting and public dissemination of: (i) transactions involving a U.S. person as counterparty; and (ii) transactions accepted for clearing by a U.S. clearing agency. The regulation also requires regulatory reporting, but not public dissemination, of transactions without a U.S. person if at least one counterparty is a registered security-based swap dealer or a registered major security-based swap participant.

Under Regulation SBSR, the duty to report is assigned to one side of the transaction (known as the reporting side). This duty is typically based on the registration status of the counterparties to the transaction and follows a hierarchy laid out in the final rule. According to the hierarchy, funds and other buy-side market participants would rarely be the reporting side because any transaction involving a security-based swap dealer must be reported by the dealer. The designated reporting side must report specified information about the transaction to a new registered entity, known as an SDR. The other side, the “non-reporting

side” must report more limited information to the SDR.

Reporting Obligations of Non-Reporting Sides

Regulation SBSR requires a non-reporting side to report applicable information about its side of the transaction, including codes to identify: (i) itself; (ii) its broker; (iii) the branch from which the non-reporting side is acting; (iv) its execution agent; (v) its trading desk ID; (vi) the trader ID; (vii) its ultimate parent; and (viii) any affiliate of the non-reporting side that also has security-based swaps reported to the relevant SDR. [\[4\]](#)

The amendments to Regulation SBSR reduce these reporting obligations in two ways. First, the amendments specify that an “externally managed investment vehicle” has no obligation to report the identity of its ultimate parent and any affiliates to an SDR. [\[5\]](#) Second, the amendments provide that counterparties relying on execution agents (e.g., asset managers), such as funds, do not have to report a trader ID or trading desk ID.

Reporting Obligations for Swaps Involving Non-U.S. Persons that Are Arranged, Negotiated or Executed in the United States

The amendments to Regulation SBSR extend the regulation’s reporting and public dissemination requirements to transactions involving conduct in the United States, even if neither counterparty is a U.S. person and the trade is not cleared at a U.S. clearing agency. Specifically, the amendments require any security-based swap transaction connected with a non-U.S. person’s security-based swap dealing activity that is arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office (“ANE transactions”) — or by personnel of its agent located in a U.S. branch or office — to be reported and publicly disseminated, unless an exception applies. [\[6\]](#) The amendments further subject to regulatory reporting and public dissemination any security-based swap transaction that is executed on a platform having its principal place of business in the United States or effected by or through a registered broker-dealer (including a registered security-based SEF). The amendments also govern the selection of the reporting side for ANE transactions.

Compliance Schedule

The SEC adopted a three-phase compliance schedule for Regulation SBSR. The compliance dates are specific to each asset class.

Compliance Date 1—Regulatory Reporting. Regulatory reporting of security-based swaps will occur only after security based swap dealers are required to register with the SEC. Regulatory reporting of newly executed security-based swaps in a particular asset class must be reported on the first Monday that is the later of: (1) six months after the date on which the first SDR that can accept transaction reports in that asset class registers with the SEC; or (2) one month after the registration date for security-based swap dealers. [\[7\]](#)

Compliance Date 2—Public Dissemination. Registered SDRs must begin public dissemination with regard to a particular asset class the first Monday that is three months after Compliance Date 1 for that asset class.

Compliance Date 3—Reporting Historical Security-Based Swap. The compliance date for reporting of historical security-based swaps in an asset class is two months after Compliance Date 2. [\[8\]](#)

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endnotes

[1] Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, Securities Exchange Act Release No. 78321 (July 14, 2016), 81 FR 53545 (August 12, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-08-12/pdf/2016-17032.pdf> (“Regulation SBSR Amendments”).

[2] Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, Securities Exchange Act Release No. 74244 (February 11, 2015), 80 FR 14564 (March 19, 2015) (“Initial Regulation SBSR Adopting Release”). For more background on Regulation SBSR and the proposed Regulation SBSR Amendments, see ICI Memorandum No. 28913 (Apr. 20, 2015), available at https://www.ici.org/my_ici/memorandum/memo28913; ICI Global Memorandum No. 28961 (May. 7, 2015), available at <https://www.iciglobal.org/iciglobal/pubs/memos/memo28961>.

[3] In addition, the amendments and guidance: (1) require a platform (i.e., a national securities exchange or security-based swap execution facility (“SB SEF”)) to report a security-based swap executed on the platform that will be submitted to clearing; (2) require a registered clearing agency to report any security-based swap to which it is a counterparty; (3) require registered security-based swap data repositories (“SDRs”) to provide the security-based swap transaction data that they are required to publicly disseminate on a non-fee basis; (4) explains the application of Regulation SBSR to prime brokerage transactions; (5) explains reporting and public dissemination requirements for certain security-based swaps involving allocation; and (6) conforms other provisions of Regulation SBSR in light of the newly adopted amendments.

[4] 17 C.F.R. 242.906(a)–(b).

[5] The Commission does not define “externally managed investment vehicle,” but notes that it used the same term in the context of rules relating to the registration of security-based swap dealers. See Regulation SBSR Amendments at 53579, n. 307. In that release, the Commission noted that, although an operating company carries out key functions (including directing, controlling, and coordinating its business activities) on its own behalf, responsibility for key functions of an externally managed investment vehicle is allocated to one or more separate persons (such as external managers, or other agents), with few or no functions carried out through an office of the vehicle itself. See Application of “Security-Based Swap Dealer” and “Major Security-Based Swap Participant” Definitions to Cross-Border Security-Based Swap Activities, Securities Exchange Act Release No. 72472 (June 25, 2014), 79 FR 47278 (Aug. 12, 2014), available at <https://www.sec.gov/rules/final/2014/34-72472.pdf>.

[6] The amendment expands the scope of Regulation SBSR by extending the reporting and public dissemination requirements to ANE transactions, even if the foreign dealing entity is not registered as a security-based swap dealer. Rule 242.902(c) enumerates eight exceptions from Regulation SBSR’s public dissemination requirement that could apply to an ANE transaction.

[7] The compliance date for security-based swap dealer registration is the later of: (1) six months after the date of publication in the Federal Register of a final rule release adopting rules establishing capital, margin and segregation requirements for security-based swap Entities; (2) the compliance date of final rules establishing recordkeeping and reporting requirements for security-based swap dealer; (3) the compliance date of final rules establishing business conduct requirements under Sections 15F(h) and 15F(k) of the Securities Exchange Act of 1934; or (4) the compliance date of final rules establishing a process for a registered security-based swap dealer to apply to the SEC to permit a statutorily disqualified associated person to effect or be involved in effecting security-based swaps on its behalf.

[8] A historical security-based swap is a security-based swap transaction that took place before the adoption of Dodd-Frank, July 21, 2010, and whose terms had not yet expired as of that date or was executed on or after July 21, 2010, but before the first date on which trade-by-trade reporting of security-based swap transactions in that asset class is required.